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No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

PETITION FOR A WRIT OF CERTIORARI

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
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April 20, 2009

QUESTIONS PRESENTED

1. Tenants Limited to Arms-Length Ex Parte Input Whether restricting tenants to Ex Parte (on the papers only) Applications during pre-trial proceedings, which require a statement of grievances 24 hours in advance, with the landlord's attorney providing an opposing Declaration when he appears at the "hearing" (which provides no contact with the judge making the decision and no opportunity for a written response to the opposing Declaration), constitutes a deprivation of Due Process of Law.

2. No Recourse When Meet & Confer Rule Violated Whether consistent and total refusal of a landlord's attorney to discuss any aspect of the case or its proceedings with self represented tenants (a direct violation of Local Rule 5.7D, when he opposes an Ex Parte Application) constitutes a violation of Due Process of Law, when **a)** the ONLY follow-up allowed under the very tight pre-trial time frame seeks enforcement of Local Rule 5.7D, and **b)** the Court's denial Order claims "not to understand the relief sought" and rules against Defendants because "the moving party will have an opportunity to present defenses at trial."

3. No Remedy for Perjury by Landlord's Attorney Whether Due Process of Law requires immediate recourse for a tenant who is deprived of ten days of preparation time by false claims of personal service, and is deprived of any opportunity for discovery because a landlord's Trial Date Request (Form UD-150) is never provided to the tenant (in spite of a sworn statement on the form that it was served on Defendant).

4. Sonoma Court's First-Available Trial-Date Policy Whether California's system whereby the landlord must be given a trial within 20 days of his

request, with the date being set after five days are allowed for a response by the tenants, constitutes a deprivation of Equal Protection of the Laws, when **a)** recipients of eviction notices are referred to this policy on the Summons by reference to a Self-Help website and **b)** Sonoma County has an unannounced policy of automatically giving the landlord the first available trial date (belatedly admitted in appeal briefing by the landlord's attorney).

5. UD-150 Trial-Date-Request Case File Tampering Whether a fraudulent insertion of this document into the Case File (stamped June 6, 2007, when its absence from the file on June 11, 2007 through June 19, 2007 has been documented) constitutes a deprivation of Due Process of Law; and whether a duly filed and paid for appeal on this subject may be ignored by the Appellate Branch, without depriving a tenant facing eviction of Equal Protection of the Laws.

6. Court Squelches Challenge to Trial Date Setting Whether Defendants were denied Due Process of Law, when they were threatened with a contempt of court fine or jail sentence, if they did not desist from challenging the fairness of the Sonoma County Superior Court's process for trial-date setting in Unlawful Detainer actions (which limited discovery to voluntary disclosures by the landlord).

7. $4000 Payment Coercion Was Hidden from Jury Whether Sonoma County's procedure for out-of-court settlement of Unlawful Detainer actions deprives tenants of Due Process of Law when **a)** Sonoma County Superior Court has a Local Rule (2.2E) setting the full allowable attorney's fee at $375 for a normal court trial, **b)** at a time when Judge Nadler had indicated he intended to deprive Defendants of a jury trial, opposing counsel demanded a UNREVIEWABLE payment of $4,000

for allowing Defendants time to look for another place to live before they voluntarily moved out and **c)** Judge Rushing refused to allow Defendants to include in their case evidence that Plaintiff's counsel was using this action as an attorney's fees generation device (as opposed to amicably restoring control of the premises to the landlord) and threatened Defendants with a contempt of court sanction, should this subject be mentioned in front of the jury.

8. Defendants Hurt by Assaults on Right to Jury Whether Defendants were denied Due Process of Law when **a)** Judge Nadler originally denied the jury trial requested by Defendants on the ground that they had put the address of the property in the wrong place on their counter request (Form UD-150) and **b)** reversed this decision in response to a reconsideration motion from Defendants, and allowed the case to go to a jury, but deprived Defendants' of ¾ of the preparation time for proposed jury instructions they were entitled to under Local Rule 4.10H(1), on the ground that they should have brought proposed jury instructions with them in addition to their reconsideration motion.

9. Service Perjury Used to Abort Discovery Process Whether demonstrable perjury to gain tactical advantage in an eviction action can be presented to the jury as evidence of bad faith by the landlord; and whether this whole subject can be brushed aside, without violating Due Process of law, by a judge's edict that "In the Court's view, the defendants were trying to go backwards. My job is to move the case forward."

10. Service Perjury Used to Abort Discovery Process Whether Defendants were denied Due Process of Law when, as a result of perjury a five-days-before-trial deadline for discovery allowed Plaintiff to "run out the clock" on requests for infor-

mation contained in Form (UD-106) Interrogatories 71.7 & 77.1; and whether a litigant injured by a violation of California's Business & Professions Code Sec 6068(d), can secure immediate appropriate corrective action to enforce its mandate that members of the bar "shall employ, for the purposes of maintaining the causes confided to the member such means only as are consistent with truth."

11. Reopening of Discovery after New Trial Date Whether the refusal of Plaintiff's counsel to "meet and confer" as required by discovery rules, and his refusal to respond to Form Interrogatories 71.7 & 77.1, made the reopening of discovery (as provided by governing precedent) a matter of essential Due Process of Law, when the trial date was shifted from June 19, 2007 to June 25, 2007 (as a result of PLAINTIFF'S frivolous challenges to Defendants' right to a jury trial and a resulting conflict with the original judge's vacation plans).

12. Denial of Caselaw-Based Jury Instruction Input Whether Defendants' Federal Due Process rights were violated by Judge Rushing's refusal to allow ANY input into jury instructions by Defendants (after the case had been transferred to her by Judge Nadler), because their proposed instructions were based on analysis of governing precedents, not picking their proposals from among BAJI and CALJIC standard instructions (and would have required Judge Rushing to "do a lot of work" analyzing the underlying caselaw).

13. Tenants Barred from Proceedings against Them Whether the disallowance of restrictive covenants in *Shelley v Kraemer* (1948) 334 U.S. 1, 14, 20 is a federal barrier to arbitrary discrimination against tenants, which curtails their right to participate in Homeowner's Association proceedings (tenants may not attend without

sponsorship by the landlord) for enforcement of CC & R's (Conditions, Covenants and Restrictions) even though homeowners have full rights to participate (Defendants were denied the right to know the nature of charges against them, in spite of their persistent inquiries on this subject).

14. Complete Bypassing of Arbitrary Discrimination Whether the holding of *Marina v Wolfson* ("in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes.") remains merely dicta when the State Legislature has cited and embraced (in AB 1400 in 2006) a holding (of *Koebke v Bernardo Heights Country Club*) that "We conclude in enacting the Unruh Act, the Legislature intended to ban all forms of arbitrary discrimination in public accommodations." Is a judge's elimination of all mention of California laws against arbitrary discrimination from jury instructions (over Defendants' strong protests) a denial of Equal Protection of the Laws.

15. Disallowing "Too Recent" Retaliation Evidence Whether barring all evidence of improper landlord motives and actions after the issuance of the 60-Day Notice to Quit on March 28, 2007 (in spite of provisions in Civil Code Sec 1942.5 which places a burden on the landlord to prove a non-retaliatory purpose for all actions taken six months before his lawsuit was filed on June 1, 2007 and the same period before eviction on July 3, 2007), constitutes a deprivation of Due Process of Law.

16. Keeping Out Halliwell Eviction Notice Evidence Whether Judge Rushing's preclusion of all evidence of improper landlord motivation in issuing a 3-Day Notice to Quit re Defendant Michael

Halliwell's occupancy (after Halliwell wrote to the landlord indicating his intention to support James Parker's Sixth Amendment right to know the nature of charges against him and to confront his accusers), constitutes a violation of State and Federal laws against arbitrary discrimination, and a denial of Equal Protection of the Laws to Michael Halliwell.

17. Letting in Anonymous Compilation of Hearsay Whether admission of an anonymous compilation of second and third hand hearsay complaints, where all of the names included in the document were redacted (Plaintiff's Exhibit 5), over Defendants strong prior and immediate subsequent protests (on the ground Defendants failed to notice that this Report by "a neighbor" was stapled to one of 24 letters that were dumped on their desk, which they had only 30 minutes to study), constitutes such unreliable evidence that it violates Due Process of Law.

18. Central Importance of Anonymous Hearsay Report Does invoking California Evidence Code Sec 352 (evidence more time consuming than probative) by Judge Rushing to allow Defendants to analyze only 16 of 39 lines of a page of anonymously compiled hearsay complaints; and refusal to reverse (by the Appellate Branch Order of March 6, 2007) on the ground that this Exhibit didn't have decisive impact (despite the landlord's testimony that this Report by the Homeowners' Association was his sole reason for eviction), constitute a Denial of Equal Protection of the Laws?

19. Concealment and Backing Off re Proving Cause Whether **a)** the "best evidence" rule was violated by not attaching the March 26, 2007 Homeowners Association Report to Plaintiff's March 28, 2007 Notice to Quit, but only referring to it in an attached February 20, 2007 Notice of Hearing and **b)**

whether the withdrawal at trial of the basis of the 60-Day Notice, "This Termination is For Cause", and relying on a landlord's right to evict at will, made the exclusion from evidence of the Opening Complaint (where the 60-Day Notice was attached), a denial of Due Process of Law.

20. No Contract Violation Means No Fees Shifting Whether Plaintiff's abandoning any effort to show cause, (where Paragraph #13 of the rental agreement provides for attorney's fees only in lawsuits "to enforce any provision of this agreement" and Civil Code Sec 1717 limits shifting attorney's fees only to provide compensation for proven contract violations) eliminates any basis for requiring to Defendant to pay Plaintiff's legal costs.

21. Evasive Maneuvers re Status of Fees Motion Whether **a)** the refusal of Plaintiff's attorney to "meet and confer" to discuss possible settlement "in accordance with applicable law" (as required by Local Rule 5.5) and **b)** his refusal be bring his July 3, 2007 fees motion before the court by listing the known (August 28, 2007) time and place of the hearing on the face sheet (as required by Local Rule 18.8) and **c)** not providing an endorsed filed copy of the motion when filed (which was promised by the letter of conveyance, which described the accompanying document as an unfiled motion given to Defendants to facilitate negotiation over the amount of fees), constituted an effort to win by flouting procedural rules, and thereby outmaneuver unrepresented Defendants, in violation of Due Process of Law.

22. Tentative Ruling's False Claim of "No Opposition" Whether the issuance of a Tentative Ruling (which violated Local Rule 2.2D, and was later withdrawn) and using James Parker's (falsely) alleged failure to oppose the fees motion (which

Plaintiff's counsel used as a basis to try to implement the Tentative Ruling by handing his proposed Judgment After Motion to Judge Rushing's assistant and mailing it so it reached Defendants several days later) constituted a deprivation of Due Process of Law.

23. Filing Ban in Order Vacating Tentative Ruling Whether Judge Rushing's September 5, 2007 Order barring any replacement filings by James Parker (for filings by Michael Halliwell which she refused to consider because of Defendant Halliwell's alleged lack of standing to address fees issues), constitutes a deprivation of Due Process of Law.

24. Evasion of Plain Meaning of Notices of Appeal Whether vacating the $10,000 attorney's fees award made by Judge Rushing's August 28, 2007 Tentative Ruling, (after both James Parker and Michael Halliwell signed a Notice of Appeal against it), and then ignoring Defendants' September 26, 2007 Notice of Appeal after the $10,000 fees award was reinstated (because only Michael Halliwell signed it, as is authorized by *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641) in direct violation of the mandate of California Rules of Court Rule 8.750(a) (which requires that Notices of Appeal be liberally construed in support of their sufficiency), constitutes a violation Due Process of Law.

25. Unfairness of No-Notice Switch on Standing Whether a no-notice reversal of Judge Rushing's recognition of Defendant Michael Halliwell's right to seek a continuance of a fees hearing (and granting his motion), in the face of Plaintiff's explicit challenge to Defendant Halliwell's standing, constituted a denial of Due Process of Law to Defendant James Parker, when he was forced to defend aspects of the case previously managed by Defendant Halliwell (with NO opportunity to prepare to do so).

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PETITION FOR A WRIT OF CERTIORARI

This Petition for Certiorari to the California Supreme Court seeks review of an aspect of the case (S168827) with an arguable federal appeal deadline of April 21, 2009. If it is possible, Appellants seek to consolidate the subject matter of this Petition, with whatever the disposition may be of their invocation of California Code of Civil Procedure Sec 1086 in S171792, where the California Supreme Court has informed the parties (in its letter of April 6, 2009):

> The court has granted permission to file the petition for review with appendix and the petition was filed today. An answer to the petition may be served and filed before 4-27-2009, twenty (20) days after the petition is filed. The answer may present additional issues desired for review if the petition for review is granted. A reply to the answer may be filed within 10 days after filing of the answer, limited to the additional issues presented in the answer, if any.

Of crucial importance in the several intertwined appealable fees orders in this case,

is the willingness of California courts with the power of discretionary review to accept Defendants' Appendices (giving the contexts of the trial court rulings being appealed and their handling by the Appellate Branch). The Opinion Below dealt with a trial court judgment (drafted by Plaintiff's counsel) which said (without ANY additional explanation): "Judgment for Plaintiff CHRYSANTHE E. PAXINOS against Defendant JAMES PARKER for attorney's fees in the amount of $10,000." In spite of its acknowledgment that the Transcript of the September 25, 2007 Hearing (where Judge Rushing announced she would award the $10,000 to Plaintiff's attorney) was NOT part of the record on appeal, the Appellate Branch Order of March 6, 2008 "reached out" to rule in favor of this fees award, because "This reviewing Court is treating this as an appeal by both defendants from

the judgment and from any post-judgment orders."

Before declining to review this first affirmance of the $10,000 fees award (in S163276), the California Supreme Court refused to accept Appellants' proffered Appendices A & B (which included the September 25, **2007** Hearing Transcript and Defendants' analysis thereof).

However (after eight months of "procedural war games"), the Appellate Branch was persuaded to consider (at its hearing of September 25, **2008**), the fees award made by Judge Rushing a year earlier, in light of the long-delayed transcript and related briefing. When this matter reached the California Supreme Court (in S168827), the procedural evasions used to preclude earlier adjudication of **MERITS** of the $10,000 fees award were addressed our Appendix C (which argued in its motion seeking approval for the filing of this document): "THE APPEARANCE

OF JUSTICE IS AS IMPORTANT AS A PROPER DISPOSITION OF THE UNDERLYING ISSUE, AND IT SHOULD NOT APPEAR TO A REASONABLE PERSON FAMILIAR WITH THE FACTS OF THE CASE AT BAR, THAT PAGE CONSUMING DOCUMENTATION OF DELIBERATE DENIALS OF DUE PROCESS MADE IT IMPOSSIBLE TO RAISE THE ISSUES SET FORTH IN THIS APPENDIX." In spite of the fact that acceptance of an extended appendix was a rare departure from its usual practice (according to court clerks), the California Supreme Court accepted Appendix C, (but ended up denying review, giving rise to **this** petition).

After the California Supreme Court also accepted our Appendices D, E, and F (mostly related to ongoing evasive maneuvers in the case, which Defendants will address in a future Federal appeal if necessary), we were encouraged enough to include

crucial Hearing Transcript excerpts and analysis from our rejected Appendices A & B, in our Appendix G in support of a direct Mandamus Appeal to the California Supreme Court (S170538). The details of the procedural relief requested in this February 17, 2009 Appeal, have been changed by Updates (and the case number has been changed to S171792, after a remand to the First District Court of Appeal to get our Mandamus Petition onto a normal procedural pathway), but it appears certain that a decision by the California Supreme Court (when it comes) will be based on a better understanding of the $10,000 fees award than when this matter was first raised on appeal. As explained below, our primary request for relief in this Petition is for relief from deadline pressure, until the California Supreme Court has either wrapped up its consideration of attorney's fees

awarded by the trial court, or indicated that it will not review this matter.

OPINION BELOW

The Appellate Branch Opinion of October 7, 2008 has an initial paragraph, noting that Defendants' appeal was set for oral argument on September 25, 2008, before Judges Rene Auguste Chouteau, Dana Beernink Simonds and Gary Medvigy. In its second paragraph the Opinion notes that both counsels for Plaintiff (Charles Jensen and Kadin Blonski) and both Defendants (Michael Halliwell and James Parker) were present. In its final paragraph the October 7, 2008 Opinion states:

> Appellants fail to demonstrate any reversible error with respect to the September 25, 2007 attorney fee order or any order appealed from by way of Appellants' November 21, 2007 Notice of Appeal or Appellants' February 1, 2008 Notice of Appeal.
>
> Defendants' petition seeking reconsideration

of this order was ignored until (according to the Appellate Branch Order of November 17, 2008) it had lost jurisdiction to consider it. This Order adds: "Alternatively, the petition lacks merit and is denied on that basis."

JURISDICTION

Defendants' February 1, 2008 Notice of Appeal was mainly aimed at Judge Chouteau's refusal to adjudicate key fees-related issues raised in Defendants' August 29, 2007 and September 26, 2007 Notices of Appeal. Charles Jensen (supported by Judge Elaine Rushing) has pretended that the August 29, 2007 Notice of Appeal is of no effect because it challenged a $10,000 fees award which Judge Rushing vacated and reissued (after banning any follow-up briefing in her Order of September 5, 2007). Charles Jensen and Judge Rushing also pretend that James Parker has no appeal from Judge Rushing's unexplained

September 25, 2007 Order, again granting Plaintiff $10,000 in attorney fees, because our September 26, 2007 Notice of Appeal was signed (in behalf of both Defendants) by only Michael Halliwell. Charles Jensen and Judge Rushing pretend that Michael Halliwell's indirect fees liability is insufficient to establish standing, so our September 26, 2007 Appeal is allegedly a legal nullity. This is contrary to California Rule of Court (CRC) 8.750(a). Charles Jensen refused to respond to Appellants' grievances raised in briefing pursuant to their February 1, 2008 Notice of Appeal, on the ground that such issues are Res Judicata.

Because of the evasive handling of Judge Rushing's September 25, 2007 fees Order (it was never served on the parties) it was within the 90-day appeal deadline pursuant to CRC 8.751(a), when Defendants renewed their appeal from the $10,000

fees award on November 21, 2007. Defendants' November 21, 2007 Notice of Appeal also sought to breathe life into another duly filed and paid for (October 17, 2007) Notice of Appeal, on which Judge Chouteau has not allowed briefing. Thus our November 21, 2007 Notice of Appeal states: "Defendants affirm that our October 17, 2007 appeal was intended to deal with the various denials of Due Process which affected the status of the official record." The California Supreme Court may clarify this convoluted appeal situation when it rules on S171792.

Should the California Supreme Court decline to exercise its power of discretionary review in deciding S171792, Defendants contend that the entire case should be subject to review (via 28 U.S.C. Sec 1257) on a Petition for Certiorari filed within 90 days of the decision on S171792. However, on January 21, 2009 (in S168827) the California

Supreme Court declined to review the refusal of the Court of Appeal to disturb the Order of October 7, 2008. **The basic foundation of the $10,000 fees award (compensation for legal work done in behalf of Plaintiff prior to July 3, 2007) might be construed to be outside the scope of S171792, and therefore have a *Certiorari* deadline of April 21, 2009. We address such matters in this Petition.**

On May 6, 2008 Judge Rushing awarded Charles Jensen an additional $20,720 in attorney's fees (entirely for reading Defendants' briefs relating to ongoing fees-related appeals). A remark made by Charles Jensen at the January 24, 2008 Appellate Branch Hearing, caused Defendants to suspect that the Sonoma County Sheriff had turned over to him $10,118 of their frozen assets (to satisfy the September 25, 2007 fees award plus interest). The

Sheriff finally confirmed the money turnover (after repeatedly insisting that Defendants "check the case file"), but refused for 3 ½ months to provide anything in writing about this turnover. Defendants' Appendix H (in S171792 proceedings in the First District Court of Appeal, on transfer there from the California Supreme Court) notes:

> The bottleneck was broken open on May 7, 2008 when the Sheriff's Civil Bureau Manager Elizabeth Warren agreed to release a copy of what Judge Rushing sent to effectuate turning over Defendants' frozen $10,118 to Charles Jensen. It turned out to be a copy of Courtroom Minutes of 11/20/2007 **SIGNED AND CERTIFIED ON NOVEMBER 26, 2007.** (Id. at 109:9-12)

This turnover was completely OFF THE RECORD as far as anyone inspecting the Case File of *Paxinos v Halliwell & Parker* could tell. Since it was NOT accomplished by Court Order, it is outside the scope of the Appellate Branch Order of October 7, 2008 (and S168827). The earliest filing deadline

for the **May 6, 2008** attorney's fee award (where discretionary review was denied in S169634 on February 18, 2009), is May 19, 2009. The **May 7, 2008** "smoking gun" is obviously an integrity of files issue, that certainly is part of judicial interference with Defendants' right to conduct their own case (in violation of *Gray v Justice's Court* (1937) 18 Cal.App. 2d 420, 423 and *Faretta v California* (1967) 422 U.S. 806, 812-813). Case management interference is the focus of Defendants' December 22, 2008 Notice of Appeal, for which the Appellate Branch has not yet set a briefing schedule.

RELEVANT STATUTORY PROVISION

Babb v Superior Court of Sonoma County (1971) 3 Cal 3d 841, 851 provides for the issuance of a writ of mandate where "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." This is the focus of S171792, which will be

pending for at least several weeks more in the California Supreme Court.

STATEMENT OF THE CASE

The evasions noted above in the issuance of Judge Rushing's $10,000 attorney's fees award and the handling of review of this award by the Sonoma County Superior Court's Appellate Branch, are part of a broad pattern of denial of Due Process of Law and Equal Protection of the Laws.[a] If Defendants

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[a] As it happens, part of Judge Rushing's effort to hinder effective exercise of Defendants' right to appeal, came to a head at an April 14, 2009 Hearing before visiting Judge Dean Beaupre (who formerly served on Alameda County's Superior Court) on Judge Rushing's "vexatious litigant" initiative. Judge Beaupre has taken this matter under advisement and promised to issue a written opinion. Judge Beaupre's decision and the Hearing Transcript on which it is based are not available in time for inclusion in the Petition. However (because of time pressure requiring us to make use of the same documents in two proceedings), a Statement of the 25 Issues Presented here was made the focus of the Vexatious Litigant proceeding (since meritorious appeals are ipso facto not frivolous). This submission to Judge Beaupre is the accompanying Issues Appendix (Volume II). In addition, we provide a Footnotes Appendix (Volume III), consisting of Defendants' Appendix G provided to the California Supreme Court in S170538.

cannot secure federal review of the grievances in our Questions Presented, and California's higher appellate courts continue to turn a blind eye to the way California's "Secret Lawsuit" approach to contested evictions is applied in Sonoma County, the 90% of tenants in Unlawful Detainer actions who are self-represented will have no hope of justice, and arbitrary discrimination will continue to reign supreme.

A. Abuse of Homeowner's Association CC & Rs

The focus of the landlord/tenant conflict in this case is Conditions, Covenants and Restrictions (CC & R's) of the Meadow Pines Homeowners Association (#13), which bar tenants from participating in dispute resolution proceedings. Restrictive Covenants which eliminate the Sixth Amendment right to know the nature of charges which may become the basis for eviction (and did in *Paxinos v*

Halliwell & Parker) to confront one's accusers, amounts to a frontal assault on the Bill of Rights. This is an even worse abuse of basic constitutional rights than the racial discrimination that was mandated by California's restrictive covenants invalidated in *Shelley v Kraemer* (1948) 334 U.S. 1, 20:

> *The difference between judicial enforcement and non-enforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.*

The landlord's **March 30**, 2007 Notice to Quit (#19) came with a Notice (dated February 20, 2007) from the Homeowner's Association of a **March 26**, 2007 Hearing. Clearly the Best Evidence rule called for the actual hearing results, but instead the Complaint referred to charges James Parker was NEVER informed of, and was NEVER able to secure information about (in spite of many requests to the landlord,

his attorney, and the Homeowner's Association). The Complaint said "PER THE ATTACHED, THIS TERMINATION IS FOR CAUSE." The attachment said: "VIOLATION REPORTED: 'Ongoing threatening behavior of your tenant toward other residents.'" At trial, Charles Jensen abandoned any effort to show cause, and relied instead on the landlord's right to evict at will. There were also several other inconsistencies between Plaintiff's Complaint and his actual case (involving wording of the attached rental agreement and the nature of service), and Defendants tried to have the Complaint introduced as evidence of the duplicity of the landlord and his attorney, but Judge Rushing would not allow this. Judge Rushing insisted, without justification: "Sir, I have just made a ruling."

B. Sonoma County's Trial Date Setting Policy

Tenants are told on the Summons (and a

poster in the Hall of Justice) to rely on this source (www.courtinfo.ca.gov/selfhelp) for information on how to proceed in eviction proceedings (#4). The Judicial Council's website describes a process *which allows 5 days for a tenant to respond to a landlord's request before the court schedules a trial for the case.* But Charles Jensen admits: "Counsel for Respondent filed his request for trial at the window and was given (he did not request a specific date) the first possible trial date. This is how the Sonoma County Superior Court conducts this process. If a counter at-issue: is filed the Court can/has changed the date for trial if that is what is called for." (Reply Brief at 3)

Charles Jensen knows why this process prejudices defendants in Unlawful Detainer actions. On June 25, 2007 he said to Judge Rushing: "Your Honor, discovery in an unlawful detainer is based on the date **first** set for trial. That is the language of

the code section." (Transcript at 162:13-15, emphasis added.) This process is unfair to tenants (#6).

Michael Halliwell criticized trial date setting:

> It was patently obvious that if the Defendant answers on the 4th, the Plaintiff shows up on the 5th, and you set a trial date on the 6th, you don't really care what the other side has to say. It is obvious on the face of it. It looks to me like you let him just climb aboard [as] on a Law and Motion matter, like you ordinarily aren't able to do, you just take the word of the attorney what trial date he wanted and you gave it to him. (Transcript at 16:7-14)

Judge Nadler rebuffed Defendant's protest:

> We need to have an understanding with each other, Mr. Halliwell, you are now bordering in an area with your argument that I find to be disrespectful to this Court, and I'm going to warn you right now, sir, whether you are a lawyer or you are not, you are going to show this Court respect. By making accusations to the Court such as accusations of unfairness or something along those lines, sir, that is bordering on contempt of court. So I'm going to admonish you right now, you need to hear this very clearly, I will not sit here and I will not listen to those sorts of arguments. If you continue to make arguments like that, then I will find you in contempt of court. If I do that, sir, you are going to be facing the possibility of

> fines and/or jail time for each instance of contempt, okay? (Transcript at 16:15-17:1)

Sonoma County's biased trial date setting policy was aggravated by false claims of personal service (#9): *Parsons v Superior Court of Marin County* (2007) 149 Cal.App.4th Supp. 1, 6 notes this basic principle: "Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer." *Parsons* also notes that rules for a party's challenging the sufficiency of service should not be applied so as to construe this as a general appearance, because this "moots the very point he is seeking to raise." (*Delta Imports, Inc. v Municipal Court* (1983) 146 Cal. App. 3d 1033, 1036.)

Although she had admitted to never having conducted an Unlawful Detainer jury trial, Judge Rushing seemed confident that she knew the proper

way to handle one. Thus she said in her comments seeking to justify rushing through the Motions in Limine phase of proceedings: "In unlawful detainer actions, the time frames are much more truncated than in any other civil litigation for many reasons. The Court is bound to follow those rules." (Transcript at 447:3-6) Here is what the California Supreme Court has said about the underlying principle here in *Green v Superior Court* (1974) 10 Cal 3d 616, 636:

> The landlord contends, however, that the recognition of such a defense will completely undermine the speedy procedure contemplated for unlawful detainer actions. In the first place, however, while the state does have a significant interest in preserving a speedy repossession remedy, that interest cannot justify the exclusion of matters which are essential to a just resolution of the question of possession at issue. As the Court of Appeal observed in Abstract Investment Co. v. Hutchison (1962) 204 Cal.App.2d 242, 249. "Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To

> hold the preservation of the summary proceeding of paramount importance would be analogous to the 'tail wagging the dog.'" (CR-1255)

C. Sonoma County's Ex Parte Application Rule

In Sonoma County Unlawful Detainer actions (#1), tenants are restricted to Ex Parte (on the papers only) Applications during pre-trial proceedings. This procedure requires that statements of grievances be sent to the opposing party 24 hours in advance, with the landlord's attorney providing an opposing Declaration when he appears at the "hearing." This procedure provides no contact with the judge making the decision and no opportunity for a written response to the opposing Declaration. A similar affidavits-only denial of oral argument in Contra Costa County Family Court was stricken down in *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1354, where Justice Kennard cited *Goldberg v Kelly* (1970) 397 U.S. 254, 269, which affirms:

"Where credibility and veracity are at issue, written submissions are a wholly unsatisfactory basis for decision."

The consistent and total refusal of a landlord's attorney to discuss any aspect of the case or its proceedings with self-represented tenants was a direct violation of Local Rule 5.7D, when he opposes an Ex Parte Application. Under the very tight pre-trial time frame, Defendants were allowed only one follow-up to try to secure enforcement of Local Rule 5.7D. The Court's denial of this follow-up Application claimed "not to understand the relief sought," and ruled against Defendants because "the moving party will have an opportunity to present defenses at trial." Charles Jensen's non-communication policy has been a vexing problem throughout the case, because it allowed him to make evasive statements,

which he would have been forced to correct and/or justify in response to our inquiries.

D. Lack of Meaningful Discovery Opportunity

Rosales v Thermex-Thermatron, Inc. (1998) 67 Cal. App.4th 187, 199 affirms: "Litigation is supposed to be a search for truth."(#3) *Rosales* is cited in a Bar Association Resolution against concealment tactics:

> It is one of the intended purposes of the discovery statutes in California to avoid trial by surprise and ensure that the outcome of the trial will be deter-mined by a fair balancing of all the facts, rather than by the precariousness of keeping one party guessing as to another party's intentions.

Charles Jensen acted as if he had never heard of California Attorney Guidelines of Civility and Professionalism (#10) (calbar.ca.gov.). Guideline #9 says: "*Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange*

of documents." Greyhound Corp. v Superior Court (1961) 56 Cal 2d 355, 376 observes: "Certainly, it can be said, that the Legislature intended to take the 'game' element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away 'with the sporting theory of litigation – namely, surprise at the trial.' (*Chronicle Pub. Co. v Superior Court* (1960) 54 Cal 2d 548, 561.)"

Allowing documented charges of perjury to be brushed aside, thereby providing a basis for the elimination of fact-finding from the case, violates the principle set forth in *Hall v Superior Court* (2005) 133 Cal.App.4th 908, 919:

> Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law. When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the

merits, then the policy, practice or rule must give way.

E. File Tampering Used to Prevent Discovery

Defendants cite Misrepresented Filings (#5):

> Leaving aside the serious matter of how Mr. Jensen's BRIGHT BLUE form UD-150 could have been over-looked in the Case File on June 11, 2007 (when Defendant Mike Halliwell had a deputy clerk photocopy all fourteen pages in the file not submitted by Defendants, and initial "C.O." to verify that there were only these fourteen pages not submitted by Defendants, and so attested in his affidavit of that date), the fact remains that **form UD-150 and every applicable precedent contemplates that the other side will have up to five days to submit a Counter-Request BEFORE any decision is made setting the case for trial.**

Dr. Halliwell's June 17, 2007 affidavit notes:

> **On Friday afternoon June 8, 2007 an *Order & Notice of Trial Unlawful Detainer* in CHRYSANTHE E. PAXINOS vs. MICHAEL J. HALLIWELL, ET AL arrived at Defendants' address (postmarked June 7, 2007). This Notice said a trial had been set for June 19, 2007 at 8:30 AM. If somehow Michael J Halliwell reacted with lightning speed and got off an interrogatory seeking the name of the anonymous**

> **complainer mentioned in the February 20, 2007 Notice of a March 26, 2007 hearing attached to Plaintiff's March 30, 2007 Complaint, it would have arrived in Monday's (June 11, 2007) mail at Mr. Charles Jensen's office. He might have waited until his response deadline on June 16, 2007 and not answered at all (since discovery closed on June 14, 2007). He might have said he didn't know, or he might have actually supplied the name of the person who complained about Mr. Parker's "threatening behavior." It wouldn't have made any difference as it was too late for any follow-up. (CR 74-75)**

F. Frivolous Attack on Right to a Jury Trial

On June 21, 2007, Judge Nadler reversed himself and granted Defendants a jury trial, but our case was damaged by the struggle it took to obtain this basic Seventh Amendment right (#8). Judge Nadler deprived Defendants of ¾ of the time allowed by Local Rule 4.10H(1) for the filing of proposed jury instructions.

Moreover, Judge Rushing went along with Charles Jensen's June 25, 2007 attack on the format

of Defendants' submission: "They are in some form of a legal treatise, but they're not – they're not BAJI. They're not CALJIC." (Transcript at 166:23-25) Judge Rushing ruled that the lack of a timely submission by Defendants in the proper format constituted "a waiver of their right to submit anything in the form of a written statement to be read or the jury instructions. That time has come and gone." (Ibid. at 169:21-23)

Since Charles Jensen's frivolous challenge to Defendants' right to a jury trial was the reason that the trial had to be postponed, discovery should have been reopened to force Plaintiff to answer Defendants' Interrogatories (#11). Defendant's July 22, 2007 Affidavit re Misconduct of Plaintiff's Counsel says:

> There is no such thing as a legitimate "sneak attack" in the law, and the spirit embodied in CCP Sec. 2033.220(a) should be reflected in

> discovery and every other aspect of presenting the facts of a case: "Each answer in response to requests for admission shall be as complete and straightforward as the information available to the responding party permits." The California Judicial Council (under the mandate of CCP Sec. 2033.710 in developing UD-106) has sought to make sure that a landlord's "hidden intentions" do not remain so, with Form Interrogatory 77.1 which says: "State all reasons that the **NOTICE TO QUIT** was served or that defendant's tenancy was not renewed and for each reason [details omitted]. Form Interrogatory 71.7 says: "Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or **PROPERTY** caused by the defendant or other occupant of the **RENTAL UNIT** or their guests? If so, for each report state [details omitted].

In *Fairmont Insurance Co. v Superior Court* (2000) 22 Cal 4th 245, 251, the California Supreme Court speaks approvingly of the resetting of the discovery time clock endorsed in *Beverly Hospital v Superior Court* (1993) 19 Cal.App.4th 1289, 1293: "It is also consistent with the legislative history of the provision and the Civil Discovery Act of 1986 of

which it is part, which indicate that the purpose of the statute was to eliminate a source of discovery abuse and unnecessary trial delays caused by parties seeking continuances or postponements of trial for the sole purpose of extending the time for discovery." There is nothing more certain in the case at bar than that Charles Jensen's no-notice June 19, 2007 challenge to Defendants' right to a jury trial was NOT motivated "for the sole purpose of extending the time for discovery."

Charles Jensen's temporarily successful attack on Defendants' right to a jury trial had a further debilitating effect, laying the foundation for escalating attorney's fees (#7). After Judge Gary Nadler indicated he intended to reject Defendants' demand for a jury trial, he operated off the record as a mediator, to try to arrange a settlement whereby Defendants would drop their opposition to eviction,

in exchange for being given a reasonable time to find another place to live. Even though Local Rule 2.2E set the allowable attorney's fee for a normal court trial at $375, and no trial had yet been conducted, Judge Nadler made no objection when Charles Jensen demanded an UNREVIEWABLE $4,000 payment as a condition for ending the lawsuit. In subsequent briefing, Defendants made the point that Charles Jensen was placing his own interest in fee generation ahead of his client's interest in regaining possession of the disputed premise. However, Judge Rushing would not allow Jensen's insistence on an exorbitant, unreviewable fee to be cited by Defendants' as evidence of improper motivation. Thus, in June 25, 2007 pre-trial proceedings, Judge Rushing ruled:

> Then there was some discussion in your brief about settlement discussions. That is absolutely forbidden. There's to be no mention,

> none, of any offers made by anyone to settle this case prior to coming to trial today in front of the jury. That would cause a mistrial, which would require me to excuse everybody who has come over, and I would assess sanctions in terms of fines against anyone who causes a mistrial after being warned, okay? (Transcript at 154:28 to 155:7)

G. Improper Restrictions in Jury Instructions

After using Charles Jensen's second challenge to the Defendants' right to a jury trial as a vehicle for refusing to consider any corrections to our proposed jury instructions, Judge Rushing told us why she was discarding our proposals: "The document that you submitted is not – I mean, there are things in it that could be used as jury instructions, but that's – you're making me do a lot of work for you and that's not my job." (Transcript at 175:18-21) (#12) This sort of bending the rules to favor Plaintiff became an issue in Appeal Briefing (for a January 24, 2008 hearing on jury trial issues): Charles

Jensen's Reply Brief (at 7) notes: "Judge Rushing doesn't have to assume an attorney is correct." Appellants agree, but nevertheless she said early in proceedings before her: "**I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up.**" (Transcript at 163:23-26)

Defendants' Transcript Excerpts quote a June 19, 2007 hearing debate about the scope of *Marina Point v Wolfson* (#14). Defendant Michael Halliwell argued:

> Within the governing precedent, I think *Marina Point v Wolfson* is still good law, having been affirmed by the state Legislature. explicitly in the course of this amendment I'm citing, it says in *Marina v Wolfson* in negating the exclusionary policy in this case, you must recognize at the outset that in California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes. This is directly out of the governing precedent recently affirmed

> explicitly by the Unruh Act [amendment] by the Legislature.

Charles Jensen insisted that only discrimination against children is covered by *Marina v Wolfson*:

> I have listened to this charade all day long. It is the only anger I'll express. If people wish to quote the law, they should quote it correctly, whether they are an attorney or a law student, or a defendant. *Marina v Wolfson* and its companion case, not surprisingly *Wolfson v Marina* has to do with discrimination of children, period. The only dicta that was given to this court is just that, dicta, it is not the holding of *Wolfson*. *Wolfson* very clearly said you can no longer rent to so many adults and so many children if they breathe air. They are persons, and that's why [in] 1982 CAA, California Apartment Association and the PBC people changed all the rental agreements and it now says people. To quote *Wolfson* for other than that is to intentionally and knowingly mislead the Court. The Court is dead on the money with the application of Unruh, and its nonapplication in this case. (Transcript at 81:25-82:13) (CR-1166)

One can read all of Judge Rushing's jury instructions, and not realize that California has any fair housing laws. Judge Rushing did recognize that

retaliatory eviction is illegal in California, but she unfairly limited this aspect of Defendants' case (#15). Defendants cite Appeal Briefing (for the January 24, 2008 jury trial Appeal Hearing). Charles Jensen stops short in his quotation of Civil Code § 1942.5(a) just after listing "has given notice" as triggering a six month burden of proof obligation, while leaving out two other crucial benchmarks. Thus Defendants' Reply continues (at CR-1519):

> Charles Jensen realizes that 180 days before his seeking to recover possession of 1041 Copeland Creek Drive in an unlawful detainer action or proceeding (on June 1, 2007) is a viable "evidence window" and so is the 180 days before his causing the lessee to quit involuntarily (on July 5, 2007). In other words, Plaintiff's attorney knows that all of the evidence excluded by Judge Rushing because it was "too recent" should have been allowed to be introduced.

Judge Rushing ruled that the jury could not consider whatever role was played by Mr. Paxinos in post-notice concealment of the nature of complaints

against James Parker. She said: "Well, his actions taken since the notice are irrelevant." (Transcript at 278:28 to 279:1).

Judge Rushing also refused to admit any evidence relating to arbitrary discrimination against Defendant Michael Halliwell. After a series of attempted questions and objections relating to whether Gus Paxinos would have wanted to do a credit check on any replacement for Mr. Howard and why no attempt had been made to inquire about the creditworthiness of Mr. Halliwell, the witness was asked this question about the basis for his attempting to evict him by Michael Halliwell: "In exercising your right to elect to allow me to stay or not to stay, did you make any inquiries whatsoever from any source whatsoever about any characteristic whatsoever of Michael Halliwell?" (Transcript at 224:6-9) Charles Jensen intervened: "Objection,

Your Honor. Relevance." (Ibid. 224:10) Judge Rushing ruled: "Sustained." (Ibid. 224:11) Michael Halliwell responded: "I'm asking him about his decision making process; this is a discrimination case, and I don't understand how it could possibly be irrelevant, [asking] how he is exercising his discretion." (Ibid. 224:12-15) Judge Rushing replied: "I'm sustaining the objection." (Ibid. 224:16)

H. Anonymous Hearsay Shielded from Scrutiny

Judge Rushing ignored the Rules of Evidence (#17): *In re Michael G.* (1993) 19 Cal.App.4th 1674 notes:

> Evidence Code section 1200 provides, in pertinent part: "(a) 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible."
>
> The purpose of the "hearsay rule" is to preserve a party's Sixth Amendment right to confront and cross-examine an adverse witness and to disallow testimony coming from a witness who is not under oath and

whose demeanor cannot be observed by the trier of fact. (19 Cal.App.4th at 1677)

Defendants' 12/7/07 Transcript Analysis observes:

Judge Rushing did not appear to be much concerned about such principles [prohibitions in Evidence Code Sec 1200 against hearsay], since she responded to Michael Halliwell's invocation of the Sixth Amendment (which mandates every court in this nation to respect these fundamental rules of evidence) by ruling: "It is irrelevant." (Transcript at 351:18) In a government of laws, not men and women, respect for the Constitution must transcend respect for any judge determined to brush aside such considerations.

In an effort to appeal to the sense of fundamental fairness of jurors, Michael Halliwell said (in a tone of voice that left little doubt as to whether he thought judicial prerogatives should take precedence over the Bill of Rights): "The Sixth Amendment is irrelevant. Fine." (Transcript at 351:19) Judge Rushing nipped in the bud any thoughts Michael Halliwell might have had of mentioning the California Evidence Code, with this response (Transcript at 351:20-25) to his allusion to the Bill of Rights: "You know what, Mr. Halliwell, I'm going to stop you from making those comments anymore in this courtroom. When I make a ruling that something is irrelevant, you don't comment to the jury that the Sixth

> Amendment is irrelevant, and I consider that contemptuous behavior. I won't tolerate it." (CR-1417)

Judge Rushing explained her refusal to rule on Defendants' exclusionary motion (directed at surprise evidence within the ambit of Form Interrogatories 71.7 & 77.1):

> Normally – let me just explain something. We're in the middle of a jury trial. I never have jurors outside waiting. This is not the time to do this. That's not what we do to jurors. I never keep jurors waiting. I don't care what anyone wants to file, and I don't know that these are fileable, in proper form or whatever, but I'm just telling you right now, once a jury trial started – you wanted the jury, you have got them. They are out there. I'm not keeping them waiting. We're going to put on the case. If there's a break, we can let them go later, and I can consider some papers if you would like. (Transcript at 316:23 to 317:5)

Defendants were not successful in changing Judge Rushing's unwillingness to protect what they viewed as their evidentiary rights, but she seemed to have second thoughts about keeping our efforts out

of the record, when she made this offer the next day: "We are going to stay on the record to permit the parties to place on the record anything that was said at sidebar that wasn't argued on the record." (June 26, 2007 Transcript at 442:8-10) Defendant made the handling of Exhibit 5 the first issue he raised, although he could not remember its number: "I had a motion to strike the March 28th letter with the redactions in it that – I'm not sure of the exhibit number. March 28th should identify it clearly enough. On the grounds that it was improper due to the anonymous nature of the complaint and other procedural reasons." (Ibid. at 442:23-28) Judge Rushing addressed every OTHER issue raised by either side, but then backed off from trying to justify her handling of Exhibit 5. She ended the discussion by saying: "I'm not making any further rulings than that. We are going to be in adjournment." (Ibid. at 447:18-20)

Defendants' 11/26/07 Transcript Analysis observes:

> Judge Rushing [as part of document dump which Defendant described at the time: "They just dumped a pack of letters, undifferentiated, saying here's 24 letters, plop." (Transcript at 242:27-28)] admitted a report filled with third-hand hearsay complaints made by unspecified persons, compiled into a report by an anonymous person, and put into evidence as a result of it being conveyed by a third person (not available for cross examination) who wrote on the bottom of the anonymous report "This was submitted by a neighbor." (Exhibit 5, filed by Defendants after trial at CR-144). However, when Michael Halliwell asked James Parker (Transcript at 299:21 to 300:6) about a communication to him by "Chris and Christine, the people who lived next door to me," he was not allowed to answer this question: "Did either of these people ever communicate with you that they received any satisfaction on this basic grievance?" Charles Jensen interrupted at this point, saying: "Objection, Your Honor. Any response will be hearsay." Judge Rushing responded: "Sustained." (CR-1239)

Defendants' December 7, 2007 Transcript Excerpts further documents Judge Rushing's shielding of Exhibit #5 from full examination (#18):

> Judge Rushing interrupted James Parker's discussion of Exhibit #5 (Transcript at 355:17-18) and Michael Halliwell protested: "I want to go through the evidence." (Ibid. at 355:19) Judge Rushing responded: "Actually, sir, I have the right to control the means and manner, and also there's an Evidence Code section called 352 which prevents repetition and cumulative evidence and things that are more time consuming than probative. The jury is only here for a limited time. We need to get through the rest of this case." (Ibid. at 355:20-26) Michael Halliwell responded: "Considering the critical nature of this document, I'd like to be able to go through it line by line. Are you ruling that out? (Ibid. at 355:27 to 356:1) Judge Rushing answered: "I am." (Ibid. at 356:2) (CR-1421)

Charles Jensen stressed the decisive role of the March 28, 2007 letter from the Homeowner's Association conveying a compilation of hearsay complaints (with all of the names redacted), with the sole identification "submitted by a neighbor about Resident 1041." He asked the landlord: "Was there any other reason that you served the 60 day notice other than what's in that letter?" Gus Paxinos re-

plied: "No." (June 26, 2007 Transcript at 378:316-18)

I. Evasive Procedure to Impose Fees Judgment

Judge Rushing was determined to ignore what James Parker said in opposition to awarding ANY attorney fees to Plaintiff (#20). James Parker's supposedly non-existent Opposition points out (at CR-416) why Charles Jensen was entitled to NO fees at all, because Jensen explicitly stated that his theory of the case was NOT seeking to prove cause, i.e., a violation of the rental agreement, "because the code section says no cause is needed" (see June 25, 2007 Transcript at 172:25 to 173:3). Parker cites *Walters v Marler* (1978) 83 Cal.App.3d 1, 27-28, quoting *McKenzie v Kaiser-Aetna* (1976) 55 Cal.App.3d 84, 89-90, rejecting the idea that the Legislature in enacting Civil Code sec 1717 meant to include "all provisions in the contract allowing for attorney's fees, whether or not those fees are

incurred to enforce the provisions of the contract." It states that the only reasonable interpretation of section 1717 is "the allowance of attorney's fees only when such fees are incurred to enforce the provisions of the contract." Parker's August 22nd Memorandum points out: "The jury has found NO breach of contract and the contractual language (clause #13 in the rental contract allows attorney's fees only 'to enforce any part of this agreement.')"

When a hearing was held on Plaintiff's $10,000 attorney fees motion, Charles Jensen followed his uniform policy in fees matters, of saying NOTHING (#21) about the underlying merits. Before the September 25, 2007 fees hearing took place, Charles Jensen made a determined effort to win by evasive maneuvering, which flouted Local Rules: **a)** Plaintiff's attorney refused to "meet and confer" to discuss possible settlement "in accordance

with applicable law" (as required by Local Rule 5.5); **b)** Charles Jensen refused to bring his July 3, 2007 fees motion before the court by listing the known (August 28, 2007) time and place of the hearing on the face sheet (as required by Local Rule 18.8); and **c)** he did not provide an endorsed filed copy of the motion when filed (promised by a July 3, 2007 letter of conveyance, that described its document, as an unfiled motion being given to Defendants to facilitate negotiation over the amount of fees).

Charles Jensen's evasions violated a basic principle cited from *Adams v Murakami* (1991) 54 Cal 3d 105, 120:

> The issue is not merely a question of trial strategy. As our former colleague Justice Peters aptly put it, "**The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits**, but a method devised by a civilized society to settle peaceably and justly disputes between litigants. The rules of the contest are not an end in themselves." (*Simon*

v City of San Francisco (1947) 79 Cal.App.2d 590, 600)

Charles Jensen lied to support his fees award (#22):

In his [3/29/07] proposed JUDGMENT AFTER MOTION, Charles Jensen states: "Defendant JAMES PARKER did not oppose the motion." There is no doubt that Mr. Jensen knows that this statement is FALSE. Jensen probably ordered Mr. Blonski to sever e-mail communications with Defendants, but that did not prevent his becoming aware of Defendants' e-mail in spite of this ban (CR-458) sent 9:24:54 on Mon, 27 Aug to kadinblonski@hotmail.com captioned "Attention Charles Jensen." The first sentence of this e-mail states: "Today's Court Filing provides one attached new document (dated August 27th infra, and the August 22nd documents infra, previously sent to you via e-mail only)." Mr. Jensen certainly knows (since he had six full days to study these documents before the hearing) that the listed "August 22, 2007 DEFENDANT'S REVIEW OF SUBTERFUGES RELATING TO ATTORNEY'S FEES" was not accidental in its use of the singular in "DEFENDANT'S" and that **the Defendant who signed this August 22, 2007 Opposition to Charles Jensen's fees motion was JAMES F. PARKER.** (James Parker's September 1, 2007 Affidavit at CR-523 to CR-524)

Judge Rushing postured at her 8/28/07 hearing (#23):

Judge Rushing said when she vacated her Tentative Ruling that she "inadvertently" overlooked that she had informed the parties that there would be no tentative ruling in the case. This inadvertence was deliberate since Judge Rushing certainly saw that Charles Jensen and the Defendants both showed up on August 28, 2007 expecting a hearing to take place. (We were in the front row and had announced our presence to the clerk in Courtroom 19.) Judge Rushing rearranged the order of cases posted outside the courtroom that day, so that as she called one by one all the cases listed after MCV 191306 were completed, before she called a recess and swiftly left the courtroom. When I stood up and clearly said "Your Honor," the bailiff demanded that I immediately go out into the hallway. I informed the bailiff that Judge Rushing's own order said that there would NOT be a tentative ruling and that mandatory appearances would be required, and offered to show him the order. The bailiff went back and checked with Judge Rushing, and returned with an order that we leave the premises at once or be arrested. (Michael Halliwell's September 25, 2007 Affidavit at CR-707 to CR-708)

Judge Rushing tried to PREVENT James Parker from curing the "defects" of memoranda opposing an award of attorney's fees

> which were submitted by Defendant Halliwell, by resubmitting the same arguments in his own name. Her Order of September 5th states: "No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007." As Appendix B Transcript Analysis notes (at 6:15-16) when James Parker came to the September 25, 2007 hearing and said "I have some papers to put in, if I may?" Judge Rushing replied "No, it's too late for that, sir." (Transcript at 330:26-28) (Appellants' April 18, 2008 Petition at 14:8-17)

Judge Rushing conducted a September 25, 2007 "silencing" instead of a hearing (#25). She proclaimed: "I am sorry, Mr. Halliwell, I'm not going to permit you to say anything in this argument at this hearing." (Transcript at 466:28 to 467:2) Michael Halliwell responded: "Not even on the central issue of whether I should be allowed to speak?" (Ibid. at 467:3-4) Judge Rushing replied: "No, it's the same rule." (Ibid. at 467:5) Michael Halliwell continued: "Well, I believe Your Honor is mistaken. I object for the record." (Ibid. at 467:6-7)

Judge Rushing terminated the discussion: "Mr. Halliwell, I've just made my ruling." (Ibid. at 467:8)

After trying to blame Defendants for the two prior hearing postponements, Judge Rushing ruled: "I don't see the basis for a continuance." (Transcript at 475:7-8) Judge Rushing would not allow James Parker to explain why Defendant Halliwell was not acting as an attorney, but as an equally injured Defendant under their equal cost sharing agreement. Charles Jensen had previously said: "Plaintiff has no oral argument to offer the Court." (Transcript at 472:21-22) So, Judge Rushing shut down the fees hearing without saying a word about the merits:

> The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,000 in attorney's fees against Mr. Parker only. (Transcript at 475:27 to 476:2)

At the next fees hearing (on the day after

Defendants cited this ruling in Appendix B), James Parker asked Judge Rushing: "Since the Court has never cited any case law as to why Michael Halliwell has not been allowed to speak, I would ask the Court to cite some case law as to why not." (May 6, 2008 Transcript at 5:10-12) Judge Rushing replied: "I'm not required to do so and I decline that request." (Ibid. at 5:13-14.)

At the November 20, 2007 Claim of Exemption hearing re the $10,000 fees judgment (#24), Charles Jensen cited nothing to contradict the holding of *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655, and CCP Sec 917.1(d) that a judgment consisting only of attorney's fees and other costs was not enforceable during the pendency of an appeal, without the appellant having to post an under-taking (appeal bond). It turned out that Charles Jensen's ground for opposition was an attempt to do

an end run around CRC 8.750(a) that requires Notices of Appeal to be liberally interpreted in favor of their sufficiency. In spite of James Parker's totally unambiguous support for Defendants' appeals from the $10,000 attorney's fees award, Charles Jensen was able to convince Judge Rushing that Defendants' appeal from the initial award of the $10,000 should be ignored, because it was vacated and reinstated after the appeal. This is a direct contradiction of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. Charles Jensen convinced Judge Rushing to disregard Defendants' appeal from the renewed award of the $10,000 on the ground that only Defendant Halliwell had signed it. This quibble is rejected in *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641. Judge Rushing further trampled on the rule of law by refusing to allow James Parker any opportunity to respond to Charles Jensen's

grounds, once they had been disclosed at the hearing. This was a direct violation of CCP Sec 703.580 (a) & (c).

REASONS FOR GRANTING CERTIORARI

How marvelous it would be, if the state of siege described above was the full extent of Defendants' legal ordeal. In fact, Defendants continue to face an ongoing attack which has increased their attorney's fees liability by a factor of five. Order of Examination Proceedings (OEX) have twice involved threats of a contempt of court jail sentence for exercising our State appellate rights. Only at the last minute did Judge Robert S. Boyd pull back (in his Orders of July 23, 2008 and January 20, 2009) from trying to enforce his unlawful orders (issued in violation of California Code of Civil Procedure Sec 916(a)). Recently James Parker **was sent to jail for defending his right to file this Petition, and**

refusing to accede to flagrant violations of his right to Due Process of Law. Judge Rushing has launched a "vexatious litigant" initiative against Defendants, designed to penalize us for exercising our right to appeal, **and timed to divert our energies from preparation of this petition.**

The accompanying Footnote Appendix provides the complete text of the only substantial Court Order (of March 6, 2008) in the case. All of the key orders making and upholding the $10,000 fees award have been quoted in previous sections. All of the orders denying discretionary review have said only "The petition is denied." Our Footnote Appendix provides a thorough analysis of every point in the Order of March 6, 2007. Footnote 107 gives the text of the ONLY defense Charles Jensen has given for any of the Appellate Orders or decisions not to grant discretionary review in this case. <u>The **only**</u>

defense to our charges ever made by Charles Jensen, has been to point out the number of pages it takes to document our grievances. **However**, on the crucial point of length limitation, the California Supreme Court has moved to the point of being fully supportive of our unusually long submissions.

Defendants never had an opportunity to present their main defense against eviction[33], that excluding tenants**[35]** from CC & R enforcement proceedings violates *Shelley v Kraemer* (1948) 334 U.S. 1, 20 (which bars enforcement of restrictive covenants that undermine fundamental rights). Key evidence of the landlord's retaliatory motive was improperly excluded because it was too recent.**[34]** Sonoma County's policy of setting the trial as early as possible**[28]** violates the process which tenants are told to rely upon**[42]**, and has the effect[10] of eliminating discovery.**[56-57]**

Proof of perjury re service of papers[7] was ignored as was our appeal on this issue.[11] This paved the way for the admission[32] of an anonymous compilation of hearsay complaints[30] in spite of Defendants' motion to exclude it. The fulcrum[44-46] for many of these reversible errors[4] was Plaintiff's frivolous challenges to our right to a jury trial, which somehow translated into a ruling restricting[87-88] and ultimately eliminating any input from Defendants re jury instructions.[47-48]

The strict compliance with notice procedures[60-62] necessary[14-15] to invoke expedited procedures in eviction lawsuits[64], was vitiated by an Appellate Branch ruling[53-55] that ignored violations of Judicial Council mandates[43] and Local Rules.[36] The Opinion of March 6, 2008 refused to consider caselaw[58-59] defining the

difference between special and general appearances.**[105-106]**

The linch-pin of the Opinion of March 6, 2008 was the subtenancy aspect of the case, which Plaintiff pressed in proceedings before Judge Nadler and then abandoned.**[1]** When the case was transferred to Judge Rushing, she ruled out any evidence**[8-9]** related to this aspect of the case. In fact, Plaintiff gave up trying to prove any cause**[21]** and won a verdict based on a landlord's right to evict at will. Without any proven contract violation**[16]**, California Civil Code Sec 1717 barred ANY award of fees. Judge Rushing improperly denied Michael Halliwell's standing on the fees issue**[101-104]**, and refused to allow James Parker to replace**[2]** briefs filed by Halliwell. There was no basis for keeping the lawsuit alive, just for the sake of generating fees**[98-100]**, no basis for claiming**[20]** that James

Parker failed to appeal the fees issue**[96]** and no basis for the Appellate Branch to "reach out"**[19]** and affirm the unbriefed fees aspect of the case.**[94]**

All of Defendants' main grievances have a significant basis in federal constitutional and statutory law. Defendants had no control over timing of fees motions, the resulting timing of state appeals, and federal appeal deadlines. Defendants ask their federal rights not be allowed to "slip through the cracks" because of our inability to consolidate the case without missing an appeal deadline.

We cannot predict how the California Supreme Court may rule on those procedural "entanglements" in S171792. However, our deadline for this appeal is now, so we ask the U.S. Supreme Court to preserve the federal reviewability of Defendants' grievances to the extent necessary to eventually allow federal review of our entire case.

(2)

Supreme Court, U.S.
FILED

09-171 APR 20 2009

OFFICE OF THE CLERK

No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME I

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526, halliwel@csulb.edu

April 20, 2009

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FOREWORD

The relief sought in Defendants' April 20, 2009 Petition for Certiorari is simply preservation of their right to federal review of their federal constitutional rights, until there has been some disposition by the California Supreme Court of our Petition (S171792) seeking to untangle what has become a very complicated procedural situation. We supply here the Orders of the California Superior Court which determine the scope of the unexplained denials of discretionary review by the California Court of Appeal on November 26, 2008 (in A123226) and the California Supreme Court on January 21, 2009 (in S168827).

Attorney's fees always relate to prior proceedings, and there has never been a "clean" demarcation with respect to what aspect of the case is covered, because ALL of the fees awards in this case are completely unexplained. This is not the place to offer our explanations of what we think was covered, because "When making the required corrections to a petition, no change to the substance of the petition may be made." We can, however, quote from the complete texts of the relevant orders, to provide the reader

some guidance as to the pathway this case has followed.

1) Judge Elaine Rushing's Order of **July 12, 2007** sets a fees hearing which never took place, because Defendants were not informed of the July 31, 2007 hearing until that date was almost upon them, and because Plaintiff never informed Defendants of the filing of his July 3, 2007 Motion for Attorney's fees.

2) The replacement fees hearing set for August 28, 2007 did not take place either, because Judge Rushing violated this provision of her July 12, 2007 Order: "There will not be a tentative ruling – mandatory appearances will be required." The Superior Court's **August 30, 2007** Notification was issued in response to Defendants' August 29, 2007 Appeal of the $10,000 fees award made in Judge Rushing's August 28, 2007 Tentative Ruling.

3) Even though CCP Sec 916(a) precludes any action (other than to preserve the status quo) by the trial court with respect to a judgment under appeal, Judge Rushing sealed off any opportunity for James Parker to respond to the basis for her $10,000 fees award, the alleged fact that "JAMES PARKER did

not oppose the motion." Judge Rushing's Order of **September 5, 2007** states: "No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007."

4) Judge Rushing never served her Order of September 25, 2007, but Defendants appealed her bench ruling of that date: "The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,000 in attorney's fees against Mr. Parker only." (Transcript at 475:27 to 476:2) Judge Rushing ruled that Defendants' September 26, 2007 Notice of Appeal was invalid because "Mr. Halliwell is not an attorney. He cannot represent you." (Transcript 482:5-6) However, Defendants renewed their challenge to the $10,000 Fees award in their November 21, 2007 Notice of Appeal. This appeal was acknowledged by the Appellate Branch, and their **January 14, 2008** briefing order set a June 26, 2008 hearing date.

5) On February 4, 2008, a controversy erupted over Defendants' right to use their serial numbering of filings in a designation of the record on appeal

(rather than having to wait for completion of the chronological index), which led to a **February 5, 2008** Appellate Branch Order vacating the January 14, 2008 briefing order.

6) The Appellate Branch Order of **March 26, 2008** (at 1:25-27) acknowledges that the September 25, 2007 Hearing Transcript is not part of the record on appeal, but it "reached out" (at 4:8-11) to uphold Judge Rushing's fees award: "Assuming arguendo that Parker actually appealed the attorney fee award against him ($10,000), there is no basis for reversing the award. Parker never opposed the motion for attorney fees. Defendant Halliwell, who was not Parker's attorney, and against whom no fees were sought, did not have standing to oppose the motion (against Parker) for attorney fees."

7) For several months, the Appellate Branch simply ignored Defendants' Motion to Reconsider the Order of March 6, 2008, leaving Plaintiff's **March 26, 2008** Opposition to our Motion, the only written defense of its reasoning. Therefore, the full text of this Opposition is included in this sequence of rulings in this case. Defendants' positions on the

issues raised in the March 6, 2008 Order, are set forth in our Footnote Appendix.

8) After Judge Rushing made a May 6, 2008 ($20,720) fees award, for reading Defendants' memoranda protesting the procedural quagmire which had developed in the case, the Chronological Index was updated to reflect events since January 14, 2008 (pages 7-8 of the Index), and the Appellate Branch issued its **May 13, 2008** order to resume briefing on Defendants' November 21, 2007 Notice of Appeal.

9) On April 18, 2008, Presiding Judge of the Appellate Branch Rene Auguste Chouteau signed an order dealing with the dispute over eliminating the use of Defendants' serial numbering in designation of the case record (we had previously been allowed to submit a duplicate copy of all filings with serial CR, or Case Record numbering on the bottom of each page). However, this Order was not filed until **May 23, 2008**. It said in its entirety: "Appellant's Petition re No-Notice Change is denied."

10) When it became apparent that the fees hearing transcripts would not become available in time for this issue to be argued at the January 24,

2008 Appellate Branch Hearing, Defendants submitted a motion for separate appeal hearings to Presiding Judge of the Sonoma County Superior Court Robert S. Boyd. This motion was instead referred to Judge Chouteau, who denied it on April 18, 2008. This Order was also not filed until **May 23, 2008**. In its entirety, it said: "Appellant's Petition for Separate Hearings is moot and is denied on that basis."

11) A major focus of Defendants' motions directed against the Order of March 6, 2008, was inconsistencies about assurances at the January 24, 2008 hearing that the fees issue would be left for consideration at a June 26, 2008 hearing, and the attempt in the Order of March 6, 2008 to summarily dispose of the fees issue. On **May 23, 2008**, Judge Chouteau made his only response to our March 20, 2008 reconsideration motion: "Appellant's Motion for Reconsideration and Appellant's Petition to Resolve Inconsistencies are deemed to be a Motion for Rehearing, which was denied by operation of law on April 5, 2008, pursuant to CRC 8.708."

12) The Appellate Branch eventually got around to hearing Defendants' appeal from the $10,000 fees

award, on September 25, 2008, at which time a denial of our appeal was announced from the bench. The only part of the written Appellate Branch Ruling After Appeal of **October 7, 2008**, which says anything about the issues in the appeal, states: "The appeals are **DENIED**. Appellants fail to demonstrate any reversible error with respect to the September 25, 2007 attorney fee order or any other order appealed from by way of Appellants' November 21, 2007 notice of appeal or appellants' February 1, 2008 notice of appeal."

13) On October 21, 2007, Defendants filed a motion to reconsider and clarify the Order of October 7, 2008, which was ignored by the Appellate Branch until November 12, 2008, when Judge Chouteau signed a ruling denying our motion. By **November 17, 2008**, the other members of the panel had also signed, and an Order was filed which said, in its entirety: "The Petitions [Defendants also filed a motion seeking reconsideration of the September 25, 2008 bench ruling] for Rehearing (erroneously titled Motion for Reconsideration) is denied. The decision became final on October 24, 2008 and any motion for rehearing is deemed denied as of that date.

Alternatively, the petition lacks merit and is denied on that basis."

14) Defendants filed a Petition for Mandamus in the First District Court of Appeal, seeking to require the Appellate Branch to address the substance of the fees issue. This received a single-judge (per Presiding Justice Anthony J. Kline) denial (A123226) on **November 26, 2008**, which said only: "The Petition for writ of mandate is denied."

15) On **January 16, 2009**, the Appellate Branch issued a Remittitur which attached the Order of October 7, 2008 and added an important detail, by checking the line which said: "Costs are not awarded in this proceeding."

16) On **January 21, 2009**, the California Supreme Court ruled (in S168827) on the $10,000 fees award which began with a July 3, 2007 negotiating offer that became a motion. This ruling says only: "The petition for review is denied."

Hon. Elaine Rushing, Supervising Civil Judge
Superior Court of California, County of Sonoma
Department 19, 1450 Guerneville Road, Bldg. G
Santa Rosa, CA 95403
Telephone: (707) 521-6730

FILED
July 12, 2007

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants

_____/

ORDER & NOTICE OF POST-TRIAL MOTION FOR ATTORNEY FEES

Counsel for Plaintiff, having filed "Notice of Motion for Attorney's Fees" on July 3, 2007, the court hereby schedules this matter to be heard on Tuesday, July 31, 2007 at 8:30 am, in Department 19 before the Hon. Elaine Rushing.

There will not be a tentative ruling – mandatory appearances will be required.

All responsive pleadings to be filed according to statute.

IT IS SO ORDERED.

Dated: July 12, 2007

_____
ELAINE RUSHING
Judge of the Superior Court

Superior Court of California, County of Sonoma
600 Administration Drive, Room 107-J
Santa Rosa, CA 95403-2878
(707) 521-6500, www.SonomaSuperiorCourt.com

FILED
AUG 30 2007

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS

Plaintiff/Respondent

vs.

MICHAEL HALLIWELL, et al,

Defendant/Appellant

_____/

Notification of the Filing of the Notice of Appeal [CRC Rule 8.750(b)]

TO THE RESPONDENT(S) ABOVE NAMED:

YOU AND EACH OF YOU will please take notice that appellants Michael Halliwell and James Parker filed a Notice of Appeal in the above-entitled action on August 29, 2007 at the Superior Court of California, County of Sonoma, and hereby appeals to the Appellate Division, Superior Court of California, County of Sonoma.

Date: August 30, 2007

DENISE GORDON
COURT EXECUTIVE OFFICER

by_____
Heide Keeble,
Senior Legal Processor

Hon. Elaine Rushing, Supervising Civil Judge
Superior Court of California, County of Sonoma
Department 19, 1450 Guerneville Road, Bldg. G
Santa Rosa, CA 95403
Telephone: (707) 521-6730

FILED
SEP - 5 2007

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,
Plaintiff,

v.

JAMES PARKER, et al.,
Defendants
_____/

ORDER VACATING TENTATIVE RULING & RESETTING MOTION FOR ATTORNEY FEES

The court having inadvertently failed to notice that it had previously stated that no tentative ruling would be issued and that appearances would be required for the hearing on plaintiff's Motion for Attorneys Fees, the court hereby vacates its tentative ruling and resets this for hearing on the Law and Motion calendar of September 25, 2007 at 8:30 a.m. in Department 19. No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007.

IT IS SO ORDERED.

Dated: 9/5/07

HON. ELAINE RUSHING
Supervising Judge/Civil Div

Superior Court of California, County of Sonoma
600 Administration Drive, Room 107-J
Santa Rosa, CA 95403-2878
Civil Division (707) 527-1100

FILED
JAN 14, 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,

Plaintiff/Respondent
vs.

Notice of Time and Place for Filing of Briefs

JAMES PARKER, et al,

Defendant/Appellant
_____/

TO: THE ABOVE-NAMED APPELLANTS AND ATTORNEY OF RECORD AND TO THE ABOVE NAMED RESPONDENT AND ATTORNEY OF RECORD:

YOU AND EACH OF YOU, are hereby notified that the Record on Appeal in the above-entitled cause was filed in the Appellate Division on November 21, 2007, and that the said Appeal will be heard on **JUNE 26, 2008** in the APPELLATE DIVISION OF THE SUPERIOR COURT, in and for the County of Sonoma, in courtroom number 4 at **4:00pm**.

Pursuant to California Rules of Court, Rule 8.706, appellant shall file an opening brief not later than **February 4, 2008.** Respondent shall filed a brief within twenty (20) days after the filing of appellant's opening brief. Appellant may file a reply brief within ten (10) days after the filing of respondent's brief.

ALL BRIEFS ARE TO BE FILED IN TRIPLICATE [Sonoma County Superior Court Rules, Rule 11.5] The clerk will not file any brief which is tendered for filing after the time fixed [CRC, Rule 8.706(e)]. Failure to file a respondent's brief may result in Appeal being submitted on the Record and Appellant's Opening Brief. Failure to prosecute Appeal with diligence may result in Appeal being dismissed [CRC, Rule 8.762(c)].

Date: January 14, 2008

DENISE GORDON
COURT EXECUTIVE OFFICER

by_____
Heide Keeble, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SONOMA

Date: February 4, 2008 — Courtroom: 19
Hon. RENE CHOUTEAU, Judge — Heide Keeble, Deputy Clerk

CHRYSANTHE PAXINOS,

Plaintiff

FILED

vs.

FEB 05 2008

JAMES PARKER, et al,

Defendant — Action # MCV-191306

NATURE OF PROCEEDING: Court's Own Motion to VACATE

UPON THE COURT'S OWN MOTION, pursuant to the Code of Civil Procedure § 473, in order to correct a clerical mistake, the Notice of Time and Place for Filing Briefs filed on January 14, 2008 is hereby vacated (an amended chronological index should have been completed prior to mailing. A new Notice will be mailed out along with the updated chronological index)

FEB 04 2008 (Rene Auguste Chouteau)

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SONOMA

APPELLATE DIVISION

FILED
MAR 6 2008

CHRYSTANTHE PAXINOS,

No. MCV-191306

Plaintiff/Respondent,

v.

OPINION

MICHAEL HALLIWELL and JAMES PARKER,

Defendant/Appellants.

_____/

In this very simple unlawful detainer case the trial court's judgment is AFFIRMED. Appellants fail to demonstrate any error by the trial court, let alone any *reversible* error.

FACTS AND PROCEDURE

This was an unlawful detainer case. Plaintiff/ Respondent Chrysanthe ("Gus") Paxinos (landlord) filed an unlawful detainer action against Defendants James PARKER and Michael HALLIWELL. The action was based on a breach of the rental agreement – i.e,, tenant James Parker subletting to Michael Halliwell in violation of the rental agreement.

The case was originally before Judge Nadler, but

was then passed to Judge Rushing for trial. A jury trial was held, and the jury returned a verdict in favor of Plaintiff/Respondent and against Parker and Halliwell.

This is an appeal from the unlawful detainer judgment entered against Appellants/Defendants James Parker and Michael Halliwell.

The record on appeal consists of those items specified in CRC 8.754 et seq. and a transcript from a June 19, 2007 hearing before Judge Nadler and transcripts from the June 25/June 26 trial. There is some confusion as to the nature of all the appeals, and who has filed the appeals. This reviewing Court is treating this as an appeal by both defendants from the judgment and from any post-judgment orders.

ARGUMENTS

Appellants' arguments are not a model of clarity, and are spread out in the 100+ pages of material filed by Appellants. Appellants' briefs are rambling and disjointed. However, it appears the following claims of error have been made:

(1)There were errors in setting the trial date; (2) there were defects regarding service of the summons/ complaint; (3) Plaintiffs evaded discovery; (4) the

trial court erred in denying Defendants' motion to continue case to reopen discovery; (5) the trial court erred in denying defendants' motion to exclude "Exhibit 5"; (6) the trial court erred in failing to instruct the jury on the "Unruh Act"; (7) the trial court unfairly circumscribed Defendants' input on jury instructions; (8) the trial court blocked key evidence regarding retaliatory eviction; (9) the trial court violated Local Rule 2.2D and 5.5A & B in consideration of attorney's fees; and (10) the trial court stripped Michael Halliwell of standing with no legal foundation (regarding attorney fee issue).

Plaintiff/Respondent has filed an Opposition Brief addressing the issues raised by Appellants. In summary, Plaintiff argues the appeal is procedurally defective in form, and substantively has no merit whatsoever. This court agrees.

TRIAL DATE SETTING

Appellants complain of alleged procedural irregularities in the trial setting procedures. Appellants have failed to show any irregularities. Furthermore, Appellants ultimately were given a jury trial (after Judge Nadler reconsidered an earlier ruling) as they wanted. Assuming arguendo any

irregularities, Appellants fail to show any reversible error.

PROOF OF SERVICE ISSUES

Appellants appear to argue that the trial court lacked jurisdiction because of defects in the proof of service, and therefore the judgment is void.

Both Appellants filed an Answer. Although their answers did contain one paragraph alleging proof of service defects, their Answers also contained answers on the merits of the case, and also requested affirmative relief. Appellants then participated in the action, and never filed a motion to quash. The Answers constituted a general appearance. A general appearance operates as consent to jurisdiction of the parties; dispensing with the requirement of service of process, and curing defects in service. *Dial 800 v Fesbinder* (2004) 118 Cal.App.4th 32, 52.

Appellants never established any defects in service. Even if there were defects, Appellants made a general appearance in this case and therefore submitted to the trial court's jurisdiction.

EVASION OF DISCOVERY

There was no evasion of discovery. Appellants

never served any discovery requests.

DENIAL OF MOTION TO CONTINUE TO REOPEN DISCOVERY

At the beginning of trial, Appellants orally moved for a continuance to reopen discovery. The motion was denied. Appellants fail to demonstrate that the trial court abused its discretion in denying the continuance, or denying a request to reopen discovery.

DENIAL OF MOTION TO EXCLUDE EVIDENCE (Plaintiff's "EXHIBIT 5")

At trial, Plaintiff introduced "Exhibit 5" (a letter from the Homeowners' Association). No objection was made to its admission into evidence, and the trial court admitted it into evidence. Later, Appellants made a motion to strike "Exhibit 5" as an anonymous letter, claiming it was hearsay. The letter was admitted into evidence without objection. Appellants waived any claim on appeal. Furthermore, Appellants have not shown that the trial court erred in denying, subsequent to the letter's admission into evidence, their motion to strike it. Additionally, assuming arguendo some error occurred, Defendant fails to demonstrate why a

reversal of the judgment is required.

"UNRUH ACT" CLAIMS, AND JURY INSTRUCTIONS

Appellants fail to demonstrate any error in failing to instruct the jury on the Unruh Act discrimination claim. There was no evidence of discrimination in violation of the Unruh Act. The trial court allowed defendant to argue retaliatory eviction and provided the jury with instructions regarding the defense of retaliatory eviction. The jury rejected the retaliatory eviction defense. The trial court did not block admissible evidence, and did not fail to give proper jury instructions.

ATTORNEY FEES

(Appellants' arguments regarding attorney fees (post judgment) are contained in their "Consolidated" brief.) Respondent argues these assertions relate to a motion for attorneys fees that concerned only Defendant Parker. Respondent argues that Mr. Parker never appealed the motion for attorney's fees. Therefore, Respondent argues the issue is not properly before the Appellate Panel.

As noted earlier, it's unclear from the several notices of appeal who was appealing what.

Assuming arguendo that Parker has actually appealed the attorney fee award against him ($10,000), there is no basis for reversing the award. Parker never opposed the motion for attorney fees. Defendant Halliwell, who was not Parker's attorney, and against whom no fees were sought, did not have standing to oppose the motion (against Parker) for attorney fees.

CONCLUSION

Appellants fail to demonstrate any error, let alone any reversible error. The decision of the trial court is affirmed.

DATED: February 29, 2008

Per Curiam

ALLAN D. HARDCASTLE
JUDGE OF THE SUPERIOR COURT

KENNETH J. GNOSS
JUDGE OF THE SUPERIOR COURT

RENE AUGUSTE CHOUTEAU
PRESIDING JUDGE APPELLATE DEPT.

Charles T. Jensen, Esq. sbn 69044
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1622 4th Street Santa Rosa, CA 95404
Tel: 707-527-9911 Fax: 707-527-0908
Attorneys for Plaintiff: CHRYSANTE PAXINOS

FILED
MAR 26 2008

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SONOMA

Case No. MCV-191306
(Unlawful Detainer Case)

Chrysanthe E. Paxinos,

Plaintiff, vs.

James Parker, Michael Halliwell

Defendants

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR RE-CONSIDERATION

DEFENDANTS' CLAIM a "procedural error," but utterly fail to show its impact, if any there was, on the decision of the three judge panel. The decision clearly shows that there was "(no) error by the trial court, let alone any reversible error..." (OPINION, March 06, 2008, P. 1, Lines 14.)

The purported "Request for Reconsideration" herein is cobbled together with excerpts from the internet (irrelevant), misquoted legalisms (irreverent), and the Defendants' own conclusion as to it's impact (meaningless).

Between the trial of June 2007, and the appellate arguments of January 2008, these Defendants filed, and served more than 2900 pages of whimsy, dribble, and nonsense. Nowhere were there, or are there, cohesive legal thinking and conclusions based on law and the facts of this case.

This, as all other "pleadings," are without merit, and it is respectfully requested that this "motion" be denied.

Dated: March 26, 2008

_____

Charles T. Jensen, Esq.
Co-Counsel for Plaintiff

Superior Court of California, County of Sonoma
600 Administration Drive, Room 107-J
Santa Rosa, CA 95403-2878
Civil Division (707) 527-1100

FILED
MAY 13, 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Case No. MCV-191306

CHRYSTANTHE E. PAXINOS,

Plaintiff/Respondent
vs.

Notice of Time and Place for Filing of Briefs

JAMES PARKER, et al,

Defendant/Appellant
_____/

TO: THE ABOVE-NAMED APPELLANTS AND ATTORNEY OF RECORD AND TO THE ABOVE NAMED RESPONDENT AND ATTORNEY OF RECORD:

YOU AND EACH OF YOU, are hereby notified that the Record on Appeal in the above-entitled cause was filed in the Appellate Division on November 21, 2007, and that the said Appeal will be heard on **September 25, 2008** in the APPELLATE DIVISION OF THE SUPERIOR COURT, in and for the County of Sonoma, in courtroom number **4** at **4:00pm**.

Pursuant to California Rules of Court, Rule 8.706, appellant shall file an opening brief not later than **June 2, 2008.** Respondent shall filed a brief within

twenty (20) days after the filing of appellant's opening brief. Appellant may file a reply brief within ten (10) days after the filing of respondent's brief.

ALL BRIEFS ARE TO BE FILED IN TRIPLICATE [Sonoma County Superior Court Rules, Rule 11.5] The clerk will not file any brief which is tendered for filing after the time fixed [CRC, Rule 8.706(e)]. Failure to file a respondent's brief may result in Appeal being submitted on the Record and Appellant's Opening Brief. Failure to prosecute Appeal with diligence may result in Appeal being dismissed.[CRC, Rule 8.762(c)].

Date: May 13, 2008

DENISE GORDON
COURT EXECUTIVE OFFICER

by_____
Mala Fernandez, Deputy Clerk

HON. RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT
Hall of Justice, Room 204-J
600 Administration Drive
Santa Rosa, CA 95403
Telephone: (707) 521-6740

FILED

MAY 23 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,

Plaintiff/Respondent,

v.

MICHAEL HALLIWELL &
JAMES PARKER,

Defendant/Appellants.
_____/

Case No.
MCV-191306

ORDER RE PETITION
RE NO-NOTICE
CHANGE

Appellant's Petition re No-Notice Change is denied.

Dated: April 18, 2008

_____

RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT

HON. RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT
Hall of Justice, Room 204-J
600 Administration Drive
Santa Rosa, CA 95403
Telephone: (707) 521-6740

FILED

MAY 23 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,

Plaintiff/Respondent,

v.

MICHAEL HALLIWELL &
JAMES PARKER,

Defendant/Appellants.
_____/

Case No.
MCV-191306

ORDER ON PETITION
FOR SEPARATE
HEARINGS

Appellant's Petition for Separate Hearings is moot and is denied on that basis.

Dated: April 18, 2008

_____

RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT

HON. RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT
Hall of Justice, Room 204-J
600 Administration Drive
Santa Rosa, CA 95403
Telephone: (707) 521-6740

FILED

MAY 23 2008

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

CHRYSTANTHE E. PAXINOS,	Case No. MCV-191306
Plaintiff/Respondent,	
v.	ORDER ON MOTION FOR RECONSIDERATION AND PETITION TO RESOLVE INCONSISTENCIES
MICHAEL HALLIWELL & JAMES PARKER,	
Defendant/Appellants.	

/

Appellant's Motion for Reconsideration and Appellant's Petition to Resolve Inconsistencies are deemed to be a Motion for Rehearing, which was denied by operation of law on April 5, 2008, pursuant to CRC 8.708.

Dated: May 23, 2008

RENE AUGUSTE CHOUTEAU
JUDGE OF THE SUPERIOR COURT

FILED

OCT 7 2008

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SONOMA

APPELLATE DEPARTMENT

		Case No.
CHRYSTANTHE PAXINOS,	)	MCV-191306
	)	
Respondent/Plaintiff,	)	RULING AFTER
	)	APPEAL
v.	)	
	)	
JAMES PARKER, et al.,	)	
	)	
Appellant/Defendant.	)	
	)	

This matter was set for oral argument on the appellate calendar of September 25, 2008. Seated en banc were the Honorable Rene Auguste Chouteau, presiding, the Honorable Dana Beernink Simonds and the Honorable Gary Medvigy. Michael Halliwell and James Parker were present on behalf of the Appellants/Defendants. Attorney Charles Jensen and Kadin Blonski were present on behalf of Respondent/Plaintiff.

The appeals are **DENIED**.

Appellants fail to demonstrate any reversible error with respect to the September 25, 2007 attorney fee order or any other order appealed from by way of Appellants' November 21, 2007 notice of appeal or appellants' February 1, 2008 notice of appeal.

Dated: October 7, 2008

Per Curiam

RENE AUGUSTE CHOUTEAU
Judge of the Superior Court

DANA BEERNINK SIMONDS
Judge of the Superior Court

GARY MEDVIGY
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SONOMA

APPELLATE DEPARTMENT

FILED

CHRYSTANTHE PAXINOS,	)	NOV 17 2008
Respondent/Plaintiff,	)	Case No.
	)	MCV-191306
v.	)	
	)	RULING AFTER
JAMES PARKER, et al.,	)	APPEAL
Appellant/Defendant.	)	
	)	

The Petitions For Rehearing (erroneously titled Motion For Reconsideration) is denied. The decision became final on October 24, 2008 and any motion for rehearing is deemed denied as of that date. Alternatively, the petition lacks merit and is denied on that basis. **Per Curiam**

Dated: November 12, 2008

RENE AUGUSTE CHOUTEAU
Judge of the Superior Court

DANA BEERNINK SIMONDS
Judge of the Superior Court

GARY MEDVIGY
Judge of the Superior Court

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

FILED

NOV 26 2009

MICHAEL HALLIWELL, et al.	)	
Petitioner,	)	A123226
v.	)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA,	)	
Respondent;	)	
CHRYSTANTHE PAXINOS,	)	
Real Party in Interest.	)	

Sonoma County
Superior Court
No. MCV-191306

BY THE COURT:

The petition for writ of mandate is denied.

Dated: Nov 26 2009

KLINE, P.J.

Superior Court of California, County of Sonoma
600 Administration Drive, Room 107-J
Santa Rosa, California 95403-2878
(707) 565-1100, www.sonomasuperiorcourt.com

FILED

JAN 16, 2009

PLAINTIFF(S)/RESPONDENT(S):
CHRYSANTHE E. PAXINOS

DEFENDANT(S)/APPELLANT(S):
JAMES PARKER, ET AL

REMITTITUR Superior Court # MCV-191306

I, Denise Gordon, Court Executive Officer of the Superior Court of California, County of Sonoma, do hereby certify that the decision of the Appellate Division has now become final.

_____ Appellant _____ Respondent to recover costs

_____ Each party to bear own costs

__X__ Costs are not awarded in this proceeding

_____ See decision for costs determination

Witness my hand and the Seal of the Court affixed at my office this 16th day of January, 2009 (re the appeals filed November 21, 2007 & February 1, 2008).

DENISE GORDON,
COURT EXECUTIVE OFFICER

by_____

Mala Fernandez, Senior Legal Processor

Court of Appeal, First Appellate District,
Divison Two – No. A123226

S168827

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MICHAEL HALLWELL, et al., Petitioners,

v.

SUPERIOR COURT OF SONOMA COUNTY,

Respondent;

CHRYSANTHE PAXINOS, Real Party in Interest

The petition for review is denied.

SUPREME COURT
FILED
JAN 21 2009
Frederick K. Ohlrich, Clerk

GEORGE

Chief Justice

Supreme Court, U.S.
FILED
09-171 APR 20 2009
OFFICE OF THE CLERK

No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME II

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526, halliwel@csulb.edu

April 20, 2009

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SUPREME COURT, U.S.

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ISSUES PRESENTED APPENDIX (Volume II)

1. Tenants Limited to Arms-Length Ex Parte Input

In Sonoma County Unlawful Detainer actions, tenants are restricted to Ex Parte (on the papers only) Applications during pre-trial proceedings. This procedure requires that statements of grievances be sent to the opposing party 24 hours in advance, with the landlord's attorney providing an opposing Declaration when he appears at the "hearing." This procedure provides no contact with the judge making the decision and no opportunity for a written response to the opposing Declaration. A similar affidavits-only denial of oral argument in Contra Costa County family court was stricken down in *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1354, where Justice Kennard cited *Goldberg v Kelly* (1970) 397 U.S. 254, 269, which affirms: "Where credibility and veracity are at issue, written submissions are a wholly unsatisfactory basis for decision."

Because of Defendants' inability to get onto Judge Nadler's Law & Motion Calendar, they could secure no opportunity to explain the dilemma they faced because of false service claims by Plaintiff. The Unlawful Detainer Notice to Quit is directly

challenged in Defendants' Answers which say (at CR-008): "An attempt is listed as having been made at 10:40 PM on a day when the door would have been answered if someone had knocked. *WITH RESPECT TO THE SUMMONS AND COMPLAINT THAT TRIGGERS THE DEADLINE FOR AN ANSWER TO AVOID A DEFAULT JUDGMENT, THE OCCUPANTS OF 1041 COPELAND CREEK DRIVE HAVE RECEIVED NOTHING IN PERSON OR SO FAR IN THE MAIL.*"

Defendants used the Ex Parte Application procedure to try to deal with this situation, challenging a false claim of personal service which gave them only five days to Answer the Summons and Complaint, instead of the 15 days they would have had if Plaintiff had been honest about the method of service used. Defendants asked that Plaintiff be required to "*Provide Proofs of Service missing from Case File*" and that the Court "*Postpone requested trial date 10 days.*" Defendants' motion also said: "*Once a legally adequate complaint is provided, Mr. Jensen can simply hand it to Defendants, and the Proof of Service issue will vanish. But until then, how service was performed is a critical issue, since false claims in this*

area have deprived Defendants of ten badly needed days of preparation time. Once Defendants know the outlines of Plaintiff's case, and their side promptly replies to requests for admissions and other discovery requests, we may be prepared to go to a jury trial on June 29, 2007. If not, we will cite any lack of cooperation by Plaintiff which requires a further continuance." All of the service-related aspects of this motion were ignored by Judge Nadler, who denied the motion because Defendants needed to use another method for such clarification of a Complaint.

Here is the precise basis for Defendants' request for a ten-day continuance (which readily translates into, "please wait until you have jurisdiction before taking any other action, than facilitating proper acquisition of jurisdiction."):

> It seems entirely unlikely that any sort of good faith effort was made to serve papers personally, as "Posting and Mailing" Service requires (according to California Tenants' Rights at 15/14):
>
> > In limited situations, state law allows the landlord's process server to post copies of the Summons and Complaint on your front door and mail a second set of copies (CCP Sec 415.45). Before a landlord can use posting and mailing, the landlord must get written

> permission from a judge after showing that the process server made several unsuccessful attempts to serve the papers at reasonable times. If this method of service is used, your time to respond is extended from five to 15 days. (CR-014:4-10) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 6)

Jennings v Superior Court (1967) 66 Cal 2d 867, 875-876, cites some governing precedents on preparation time:

> "While the determination of whether in any given case a continuance should be granted 'normally rests in the discretion of the trial court' (*People v Buckowski* (1951) 37 Cal 2d 629, 631, that discretion may not be exercised in such a manner as to deprive the defendant of a reasonable opportunity to prepare his defense. 'That counsel for a defendant has a right to reasonable opportunity to prepare for trial is as fundamental as is the right to counsel.' (*People v Sarazzawski* (1945) 27 Cal 2d 7, 17; accord, *Cooper v Superior Court* (1961) 55 Cal 2d 291, 302.) It is also as fundamental as the defendant's right to be advised of the charges against him, for the latter right is illusory if he then is denied sufficient time to prepare to meet such charges. (See *In re Hess* (1955) 45 Cal 2d 171, 175, and cases cited.)" (*People v Murphy* (1963) 59 Cal 2d 818, 825)

2. No Recourse When Meet & Confer Rule Violated

The consistent and total refusal of a landlord's attorney to discuss any aspect of the case or its

proceedings with self- represented tenants was a direct violation of Local Rule 5.7D, when he opposes an Ex Parte Application. Under the very tight pre-trial time frame Defendants were allowed only one follow-up to try to secure enforcement of Local Rule 5.7D. The Court's denial of this follow-up Application claimed "not to understand the relief sought," and ruled against Defendants because "the moving party will have an opportunity to present defenses at trial."

Charles Jensen's non-communication policy has been a vexing problem throughout the case, because it allowed him to make evasive statements, which he would have had to clarify in response to our inquiries. Sometimes Charles Jensen crossed the line into outright lies, as James Parker has noted in appeal briefing:

> In his response to my Opening Brief's Conclusion, Charles Jensen's Reply Brief proclaims: "Counsel for respondent has never been caught lying." The specific lie I referred to in that brief was Charles Jensen's claim in Judge Rushing's proceedings that I had tried to conceal the presence of Michael Halliwell at 1041 Copeland Creek Drive. In fact, I first called Michael Halliwell's residency to Charles Jensen's attention in a three-way telephone conversation on April 12, 2007, well

> before the trial started. But Charles Jensen pretends this conversation never took place. Charles Jensen hung up on Defendants during this April 12th conversation, and immediately severed all further communications with Defendants. This was part of his strategy to prevent us from calling other inconvenient facts to his attention.

Sonoma County Superior Court judges have allowed Charles Jensen to get away with being totally evasive at hearings. He never said a word to dispute the validity of anything Defendants filed at any hearing. Nor did he say a word in defense of his own factual claims or legal theories. See: **a)** September 25, 2007 Hearing Transcript at 472:23, Charles Jensen said: "Plaintiff will rely on plaintiff's pleadings." **b)** May 6, 2008 Hearing Transcript at 4:6-7, Charles Jensen said: "Your Honor, we believe that our motion stands on the pleadings." **c)** At the January 24, 2008 Appeal Hearing, Judge Chouteau asked: "Now, Mr. Jensen, do you wish to add anything to your papers?" Charles Jensen replied: "No, Your Honor." (Transcript at 8:9-11) **d)** At the September 25, 2008 Appeal Hearing, Judge Chouteau asked: "Let me ask Mr. Jensen, do you have anything to add to your briefs?" Charles Jensen replied: "I have nothing

further to add." (Transcript at 6:9-11) **e)** November 20, 2009 Appeal Hearing Transcript at 11:11-12, Charles Jensen said: "I will submit it on the pleadings that I will submit to you."

3. No Remedy for Perjury by Landlord's Attorney

Providing an Ex Parte moving party with no remedy for unequivocal perjury in Declarations opposing an Ex Parte Application, is a deprivation of Due Process of Law. Defendants' July 27, 2007 Protest re fabricated claim of "June 2, 2007 personal service" observes:

> Charles Jensen has tiptoed around embarrassing facts related to his false claims of service which are set forth in Defendant's Affidavit of **July 27, 2007**, which show that he cannot have testified truthfully in the affirmations on this subject he made in his June 14, 2007 Declaration. This includes **a)** the fact that James Parker was not alone on June 2, 2007 at 7:45 PM when a "personal service" was alleged to have taken place, **b)** the fact that the nearest approach to the alleged June 2, 2007 personal service was a mailing of papers which was postmarked June 4, 2007, **c)** the fact that Plaintiff was notified in a letter of June 11, 2007 that the failure of his attempts at service to that point failed to satisfy the requirements of CCP sec 415.45 (a) & (b), and d) the fact that a flagrantly inadequate tossing of the summons and complaint over our fence on June 1, 2007 (that was described as having been

> delivered otherwise in these same papers) forced Defendants' to respond in their Answers of June 4, 2007. Defendants' reply brief quotes the language in their forced Answers which challenged the clear inadequacy of service and notes: "When an Answer squarely challenges the adequacy of service in such a manner it qualifies as a 'Special Appearance' and thus DOES NOT WAIVE THE CHALLENGE TO THE SERVICE IT SEEKS TO CALL TO THE COURT'S ATTENTION.

James Parker's August 22, 2007 Brief on Fees Related Implications of Plaintiff's Subterfuges observes:

> Charles Jensen argues in Item #6 of his Declaration of June 14, 2007: "**That per CCP Sec 410.50 both Defendants have waived as a legal right any claim to invalid service, having made general appearances before this court.**" However, the California Supreme Court ruled in *The 1880 Corporation v Superior Court* (1962) 57 Cal. 2d 840, 843 that raising factual issues in a manner similar to Defendants' Answers "*are consistent with the character of a proceeding had upon a special appearance.*" *1880 Corporation* cites *Pease v City of San Diego* (1949) 93 Cal 2d 706, 711 which held: "*We do not consider the filing of the answer* [setting forth petitioner's grounds for asserting a lack of jurisdiction] to set aside the default *a voluntary general appearance or a waiver* of the objection to the jurisdiction of the court." Moreover, *Pease* (93 Cal. App. 2d at 712) cites this exact parallel with the position here of Defendants Parker and

Halliwell: "*The city did not demand that the action proceed to trial, or consent to the trial thereof.*" (CR-383:24 to CR-384:6)

Our January 24, 2008 Appeal Transcript

Appendix notes:

At the January 24, 2008 Appeal Hearing, Defendant Michael Halliwell added another item to his listing of pivotal aspects of the case: "I had failed to mention an important aspect of the case dealing with the perjury charges regarding Charles Jensen relating to the [original service] and Form UD-150, and neither of which were in the file when the trial date was set – whatever your policy is, as far as trial date setting, [it is wrong] to set a trial date and have no proof of service that we've received it, and no proof of service relating to the UD-150. This is something that Judge Nadler explicitly reserved ruling on, but when we went to Judge Rushing, she said we're past all that. Basically, we were victims of deliberate, unethical tactics." (Transcript at 9:4-13) (Id. at 8:7-19)

Rosales v Thermex-Thermatron, Inc. (1998) 67 Cal.App. 4th 187, 199 penalizes unethical tactics:

Palmer's testimony is tantamount to a confession that his responses to the requests for admissions were deceptive. . . . . Litigation is supposed to be a search for truth. Here the defense abandoned its part of the search in favor of tactics that made plaintiff's pretrial discovery more burdensome. It is appropriate that the defense now pay for that burden.

Rosales is cited re Resolution (2003) #1-07-03 (Beverly Hills Bar Association) against concealment tactics:

> It is one of the intended purposes of the discovery statutes in California to avoid trial by surprise and ensure that the outcome of the trial will be determined by a fair balancing of all the facts, rather than by the precariousness of keeping one party guessing as to another party's intentions. (www.cdcba.org/pdfs/R2003/01-07-03.pdf)

4. Sonoma Court First-Available Trial-Date Policy

Defendants hoped that they would have a chance in the trial date setting process called to their attention by the Summons (CR-004) by a reference to information found at (www.courtinfo.ca.gov/selfhelp) – to secure action on their challenge to the adequacy of service before having to deal with other aspects of the case. The Judicial Council's website describes a process *which allows 5 days for a tenant to respond to a landlord's request before the court schedules a trial for the case.* But Charles Jensen admits: "Counsel for Respondent filed his request for trial at the window and was given (he did not request a specific date) the first possible trial date. This is how the Sonoma County Superior Court conducts this process. If a "counter at-issue: is filed the Court

can/has changed the date for trial if that is what is called for." (Reply Brief at 3) Charles Jensen knows why this process prejudices defendants in Unlawful Detainer actions. On June 25, 2007 he said to Judge Rushing: "Your Honor, discovery in an unlawful detainer is based on the date **first** set for trial. That is the language of the code section." (Transcript at 162:13-15, emphasis added.)

Our January 24, 2008 Appeal Transcript Appendix notes:

> The first aspect is proper setting of the trial date. If that is not set properly, of course, the whole case falls right then and there. It is our position that the Statewide policy is that the judge who sets the trial date is supposed to receive input from both sides before he sets the trial date, which did not happen in this case. I did not know it to be true, but Charles Jensen has said that the policy in this jurisdiction is to automatically take the earliest possible date and set the trial date then. [Consider] the effect of that. And since the initial trial date controls discovery, it is apparently the inadvertent policy of this particular Court, never to allow discovery except to the extent that the other side voluntarily cooperates. Because by setting the trial date at the earliest possible date, and the cut off on completion of discovery is five days before that, there's just no possible possibility of discovery." (Transcript at

> 5:19 to 6:10) Judge Chouteau responded: "You have covered this subject in the papers." (Transcript at 6:11-12) (Id. 4:15-21)

Elkins v Superior Court of Contra Costa County (2007) 41 Cal 4th 1337, 1365 makes justice the top priority:

> Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. [Citations.] Accordingly, decisions about whether to grant a continuance or extend discovery "must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." (*Hernandez v Superior Court* (2004) 115 Cal.App.4th 1242, 1246)

5. Bogus UD-150 Trial-Date-Request in Case File

Defendants were surprised by their notice of the June 19th trial date, since they had not (and never did) received a copy of Plaintiff's Form UD-150, and when they went to Room 107J on June 11th there was no (bright blue) Form UD-150 in the Case File either (see listing of Filings by Plaintiff as of June

11th at 10:00 AM (CR-025), verified by window clerk "C.O." (at CR-031). Defendants' June 11, 2007 Memorandum Relating to Trial Date Setting complains: "**Form UD-150 was never provided to Defendants**, so the clock never started running for a Counter-Request, creating many serious problems." (CR-022) (CR-1478:3 to CR-1479:3)

The integrity of court files (or lack thereof) has been a key issue in this case (documented from the first week of proceedings by Defendants and NEVER addressed by any Judge). Defendants have documented (by window clerk "C.O.") the absence of Charles Jensen's Proof of Service for his initial Summons and Complaint from the Case File on June 11, 2007 (and at every inspection they were allowed during the subsequent week) and the absence of Charles Jensen's Form UD-150 (for the same period of time). These documents later appeared as if filed on June 6, 2007 and contained false claims of a 7:45 PM June 2, 2007 personal service on James Parker and of a substitute service on Michael Halliwell at this same time (with a bogus claim that the signifycance of this substitute service was explained to James Parker). There was also a similarly stamped

Form UD-150 (wherein Charles Jensen falsely claims to have served a copy on James Parker).

Michael Halliwell protested Plaintiff's Form UD-150 service and filing defects to Judge Nadler on June 19, 2007:

> First off, we have some factual predicates we've really got to nail down here. I don't think Your Honor would rule and grant this motion if, in fact, you believed that contrary to the proof of service you have in the file that he never mailed the [Form U.D.] 150 to us, in other words, the fact that it is in the file, it was in the bowels of the bureaucracy. I'm the one that went to the Court. I got the little initials at the top, "C.O." the person who was at the window, who gave me the complete file as of the 11th. Not only am I alleging to you that I never received a document he says he mailed to me, I got one of the court employees, because I actually enumerated the 14 pages in the file that were provided by other than plaintiff, I mean defendant. We didn't enumerate our own things. But at the time on June 11th when I served the document with the Court and the opposition, it was in the case file, it lists the actual documents other than those provided by us that were physically in the file. And this document, as of June 11th at 10:00 o'clock, signed off by a person with initials "C.O." and a receipt for the 14 pages that were there, that I've even got a copy of the actual 14 pages that were there. (Transcript at 14:22 to 15:16) (CR-1141-1142)

Defendant Michael Halliwell affirmed in his July 19, 2007 Affidavit re Plaintiff's Misrepresented Filings:

> On June 11, 2007 both Defendant Mike Halliwell and the window clerk in room 107J inspected the Case File, and determined that the ONLY documents in the file from Plaintiff were the Summons and Complaint filed June 1, 2007. Defendant both served on Mr. Jensen and filed a **Complete Listing of Documents in File except Defendants' filings** (as of June 11, 2007 at approximately 10:00 AM); and the accuracy of this listing was NEVER challenged by Plaintiff's counsel in subsequent proceedings. (Notable in their absence were Plaintiff's Proofs of Service and Form UD-150 that later turned up in the file Stamped as Filed on JUN 6 2007.) (CR-250:15-22)
>
> Leaving aside the serious matter of how Mr. Jensen's BRIGHT BLUE form UD-150 could have been over-looked in the Case File on June 11, 2007 (when Defendant Mike Halliwell had a deputy clerk photocopy all fourteen pages in the file not submitted by Defendants, and initial "C.O." to verify that there were only these fourteen pages not submitted by Defendants, and so attested in his affidavit of that date), the fact remains that **form UD-150 and every applicable precedent contemplates that the other side will have up to five days to submit a Counter-Request BEFORE any decision is made setting the case for trial.** Michael Halliwell's June 17, 2007 Affidavit observes:

It would be difficult to imagine a case where the right (in mandatory Form UD-150) to make a COUNTER-REQUEST relating to the setting of a trial date is more important than in MCV 191306 as handled by Plaintiff's attorney Charles Jensen. Surprise, Surprise! This document is also missing from the case file (see Complete Listing of Documents in File – except Defendants' filings, as of June 11, 2007 at approximately 10:00 AM)... Defendant should have some input relating to jury-nonjury, estimated length of time the trial will take, and dates of non-availability and reasons therefore – before a suggestion based on *minimizing* the opposing party's opportunity to prepare, is placed on the calendar.

On Friday afternoon June 8, 2007 an *Order & Notice of Trial Unlawful Detainer* in CHRYSANTHE E. PAXINOS vs. MICHAEL J. HALLIWELL, ET AL arrived at Defendants' address (postmarked June 7, 2007). This Notice said a trial had been set for June 19, 2007 at 8:30 AM. If somehow Michael J Halliwell reacted with lightning speed and got off an interrogatory seeking the name of the anonymous complainer mentioned in the February 20, 2007 Notice of a March 26, 2007 hearing attached to Plaintiff's March 30, 2007 Complaint, it would have arrived in Mon-day's (June 11, 2007) mail at Mr. Charles Jensen's office. He might have waited until his response deadline on June 16, 2007 and not answered at all (since

discovery closed on June 14, 2007). He might have said he didn't know, or he might have actually supplied the name of the person who complained about Mr. Parker's "threatening behavior." It wouldn't have made any difference as it was too late for any follow-up. (CR 74-75)

Thus denial of discovery flows from biased trial date setting and perjury, which is protected by file tampering.

6. Court Squelches Trial Date Setting Challenge

Defendant answers Judge Nadler re trial-date notice:

Yes, I did [receive it], but I never got this document providing the information he says he sent to us. The point being that had he actually sent a document – first of all, I am perplexed. There is one thing that's quite clear, we answered on the 4th, he got our answer on the 5th, he went to the court and in one way or another got a decision setting a trial date on the 6th. That's in the record, it is undisputed. Those are the timeline [facts]. Now how in the world can the Court expect even if he had sent the document to us as he claimed, he would know that such document wasn't in the file on the 11th when I looked for it and I, in fact, filed a document with this Court noting the absence of this document, but even if it had been mailed to me, it would not have reached me in time for me to do anything about it because the Court simply didn't wait for any input from the other side.

> It was patently obvious that if the Defendant answers on the 4th, the Plaintiff shows up on the 5th, and you set a trial date on the 6th, you don't really care what the other side has to say. It is obvious on the face of it. It looks to me like you let him just climb aboard [as] on a Law and Motion matter, like you ordinarily aren't able to do, you just take the word of the attorney what trial date he wanted and you gave it to him. (Transcript at 15:19 to 16:14)

Judge Nadler warned Defendant for this protest:

> We need to have an understanding with each other, Mr. Halliwell, you are now bordering in an area with your argument that I find to be disrespectful to this Court, and I'm going to warn you right now, sir, whether you are a lawyer or you are not, you are going to show this Court respect. By making accusations to the Court such as accusations of unfairness or something along those lines, sir, that is bordering on contempt of court. So I'm going to admonish you right now, you need to hear this very clearly, I will not sit here and I will not listen to those sorts of arguments. If you continue to make arguments like that, then I will find you in contempt of court. If I do that, sir, you are going to be facing the possibility of fines and/or jail time for each instance of contempt, okay? (Transcript at 16:15-17:1)

7. Hiding $4000 Payment Coercion from the Jury

The foundation for the extraordinary (for an unlawful detainer action) legal fees awarded in *Paxinos v Halliwell & Parker* was established before

the case was transferred to Judge Elaine Rushing. After Judge Gary Nadler indicated he intended to reject Defendants' demand for a jury trial, he operated off the record as a mediator, to try to arrange a settlement whereby Defendants would drop their opposition to eviction, in exchange for being given a reasonable time to find another place to live. Even though Local Rule 2.2E set the allowable attorney's fee for a normal court trial at $375, and no trial had yet been conducted, Judge Nadler made no objection when Charles Jensen demanded an UNREVIEWABLE $4000 payment as a condition for ending the lawsuit.

In subsequent briefing Defendants made the point that Charles Jensen was placing his own interest in fee generation ahead of his client's interest in regaining possession of the disputed premise. However, Judge Rushing would not allow Jensen's insistence on an unreviewable exorbitant fee to be cited by Defendants' as evidence of improper motivation. In June 25, 2007 pre-trial proceedings, Judge Rushing ruled:

> Then there was some discussion in your brief about settlement discussions. That is absolutely

> forbidden. There's to be no mention, none, of any offers made by anyone to settle this case prior to coming to trial today in front of the jury. That would cause a mistrial, which would require me to excuse everybody who has come over, and I would assess sanctions in terms of fines against anyone who causes a mistrial after being warned, okay? (Transcript at 154:28 to 155:7)

Our mistrial motion cited Defendant's comment:

> I was denied the right to say anything at all about various ways in which the process of this inquiry was obstructed by perjury and extortion. The extortion was ruled out of bounds because it took place in settlement talks. I believe that the confidentiality of settlement – I mean the spontaneity, the uninhibitedness of the settlement talks is the basic point here. That's very similar to executive privilege where President Nixon asserted that defense because he wanted unguarded advice. It was the same principle about – in the case of criminal activity in *Nixon v Sirica* [and *United States v Nixon*], the privilege was set aside. I was not allowed to make that argument. (June 26, 2007 Transcript at 443:16-28)

Michael Halliwell then added: "I would like some clarification on the Court's grounds for denying all the relief I requested, which I've just discussed." (Ibid at 444:1-3) (CR-1252:5-11) Judge Rushing ignored this request for clarification of her handling of the extortion issue.

For fighting against this $4,000 unreviewable fees award for giving up, Defendants were eventually saddled with $10,000 in fees by Judge Rushing, even though *Santisas v Goodin* (1998) 17 Cal 4th 599, 614 states: "We are satisfied that concern for the efficient and equitable administration of justice requires that the parties be left to bear their own attorney's fees." *International Industries v Olen* (1978) 21 Cal 3d 218, 224-225 explains: "The purpose of litigation is to resolve participant's disputes, not compensate participating attorneys. Our courts are sufficiently burdened without combat kept alive solely for attorney fees." (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 26)

8. Defendants Hurt by Assaults on Right to Jury

Although Judge Nadler eventually reversed himself and granted Defendants a jury trial, our case was damaged by the struggle it took to obtain this basic Seventh Amendment right. Charles Jensen's attack on our right to a jury was based on three items missing from our request form, and one which was in the wrong place (we put the address of the property in dispute at the top, and failed to realize that the form called for it to be repeated further

down). Because Charles Jensen never sent us his request for a court trial, we did not know whether he had requested a court reporter and did not know whether we agreed with his estimate for the duration of the trial. The space for "any dates you are not available" was left blank, because any trial date which allowed for the essential preliminaries was acceptable. Charles Jensen argued: "My argument is very simple, Your Honor. Were I to bring such an 'at issue' deficient in any one of those four, it would not be accepted at the clerk's office for filing." (See Transcript at 6:7-26)

Michael Halliwell responded to Charles Jensen's motion:

> I have a similar grievance, and that is when we checked the file as of June 11th, there was nothing whatsoever in the file from him, not a deficient document like he claims we left out some of the information, but nothing whatsoever, [no U.D.] 150 or a facsimile. Somehow he acquired a trial date on June 6th, he was given a trial date of June 19th. As I read the Form [U.D.] 150, it has some very important things on there. The most important is the request/counter-request. The point where he talks about the time that you are not available for trial, it clearly in my judgment looks like the judge is supposed to do a weighing once people say this time is not

> available (here is the reason, and this time is not available, this is the reason) the judge sort of balances the equities and sets a date. But the judge never sets this date without any input from the other party. The reason why the things that were left off that he complains of is we were in effect filing a counter-request. We thought the property was already identified. We thought that he had [caused] some error in the bureaucracy to provoke the issuance of the trial date, [by filing] something to indicate these basic facts. I can't believe that the Court would deliberately issue the original trial date without him specifying what the property is, for instance. (Transcript at 7:17 to 8:13)

Judge Nadler granted Jensen's motion for a court trial:

> Okay, in trial we are. Let me start off with ruling on some motions that were made this morning. The motion to strike the counter-demand is granted, and that will be the counter-demand for a jury trial, based on the deficiencies of the demand. (Transcript at 31:6-11)

Defendants (who are non-lawyers) were nonetheless able to prepare a reconsideration motion, which Judge Nadler found persuasive (because all of the information missing from Defendants' counter-request had already been included in Charles Jensen's request for a court trial). However, Judge Nadler penalized Defendants for not having

submitted jury instructions, along with our motion to allow a jury trial, and gave Defendants very little (about ¼ the amount set by Local Rules) to prepare and deliver their proposed jury instructions to Judge Rushing. (See Transcript at 91:26 to 92:13.) Our March 20, 2008 motion for reconsideration states:

> Judge Nadler insisted that Defendants file their proposed jury instructions 72 hours before they were actually due under Local Rule 4.10H(1). Judge Rushing went along with Charles Jensen's June 25, 2007 attack on the format of Defendants' submission: "They are in some form of a legal treatise, but they're not – they're not BAJI. They're not CALJIC." (Transcript at 166:23-25) Judge Rushing ruled that the lack of a timely submission by Defendants in the proper format constituted "a waiver of their right to submit anything in the form of a written statement to be read or the jury instructions. That time has come and gone." (Transcript at 169:21-23) (Id. at 98:23 to 99:4)

9. Effect of Plaintiff's Perjury re Service of Process

Defendants challenged Plaintiff's perjured Proofs of Service, which claimed that personal service took place on June 2, 2007, along with an alleged conversation about substitute service. No personal service nor any conversation about substitute service ever occurred.

Judge Nadler had said in his Order of July 18, 2007 that Defendants "will have an opportunity to present defenses at trial." However, at the outset of proceedings, Judge Rushing failed to live up to this promise, by declaring that we could only raise the perjury issue "in some other lawsuit."

After the jury was sent off to deliberate, Judge Rushing permitted the parties "to place on the record anything that was said at sidebar that wasn't argued on the record." (Transcript at 442:9-10) Defendant Michael Halliwell responded: "I had a motion to show that they engaged in perjury in the process of getting this case started, and that operated to deprive me of any discovery by this manipulation of the time line." (Transcript at 443:3-6) When she commented on this issue, Judge Rushing said: "Such things as requests for finding Mr. Jensen, for example, guilty of perjury or some things that have to do with the service of process, I ruled that those, either they're irrelevant, inadmissible in this trial or, per timing, it's too late." (Transcript at 446:21-25) Judge Rushing added: "In the Court's view, the defendants were trying to go backwards. My job is to move the case forward." (Transcript at 447:1-2)

Judge Rushing seemed to miss the point that **Defendants were only trying to get back to where Judge Nadler had left this issue. [Judge Nadler told the parties: "I'm not making any findings right now, I haven't made any findings about service, whether it was proper or not, I don't want you to have that impression." (Transcript at 14:2-5)]** (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 12-13)

In defending this aspect of Judge Rushing's handling of the case, the Appellate Branch's March 6, 2007 opinion states (3:2-3): "A general appearance operates as consent to jurisdiction of the parties; dispensing with the requirement of service of process." *Parsons v Superior Court of Marin County* (2007) 149 Cal.App.4th Supp. 1, 6 notes this basic principle: "Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer." *Parsons* also notes that rules for a party's challenging the sufficiency of service should not be applied so as to construe this as a general appearance, because this "moots the very point he is

seeking to raise." (*Delta Imports, Inc. v Municipal Court* (1983) 146 Cal. App. 3d 1033, 1036.)

Defendants have a right to invoke court processes to challenge invalid service: The California Supreme Court ruled in *Lacrabere v Wise* (1904) 141 Cal 554, 556:

> It is an essential prerequisite to the maintenance of an action for unlawful detainer, under section 1161 of the Code of Civil Procedure, and that a three days' notice . . . should be served on the defendants, as subdivision 2 of that section requires. It is equally essential to allege the service of such demand in the complaint, and, if controverted, prove on the trial. Service is an act to be performed before suit, a fact to be alleged in bringing suit, and a fact to be proven to successfully maintain it, and such fact is to be proven as any other disputed fact in the case. The rule is, that best evidence must be produced which the nature of the transaction will permit, the testimony of witnesses given in open court where the adverse party may have an opportunity of cross-examination. Affidavits are not in the nature of the best evidence by which to prove issuable facts. They rank on no higher plane for that purpose than hearsay evidence.

Judge Rushing seemed to never have quite enough time to allow Defendants adequate opportunity to prepare, for which she offered this explanation: "There is a statutory right for very

short time frames in unlawful detainer actions." (Transcript at 159:19-20) After Charles Jensen supported Judge Rushing on this point, Defendant Halliwell replied: "I believe he referred, and Your Honor referred to Civil Procedure Code 1179(a), which does no more than establish unlawful detainer priority over other cases. It in no way implies that an unlawful detainer case itself should proceed more rapidly than justice requires." (Ibid. at 161:7-11) However, Judge Rushing cut short Defendant's plea, saying: "If this is a motion for continuance, the motion is officially denied, and so I'd like to move on to jury selection issues." (Ibid. at 161:23-25)

Although she had admitted to never having conducted an Unlawful Detainer jury trial, Judge Rushing seemed confident that she knew the proper way to handle one. Thus she said in her comments seeking to justify rushing through the Motions in Limine phase of proceedings: "In unlawful detainer actions, the time frames are much more truncated than in any other civil litigation for many reasons. The Court is bound to follow those rules." (Transcript at 447:3-6) Here is what the California Supreme Court has said about the underlying

principle here in *Green v Superior Court* (1974) 10 Cal 3d 616, 636:

> The landlord contends, however, that the recognition of such a defense will completely undermine the speedy procedure contemplated for unlawful detainer actions. In the first place, however, while the state does have a significant interest in preserving a speedy repossession remedy, that interest cannot justify the exclusion of matters which are essential to a just resolution of the question of possession at issue. As the Court of Appeal observed in Abstract Investment Co. v. Hutchison (1962) 204 Cal.App.2d 242, 249. "Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the 'tail wagging the dog.'" (CR-1255)

10. Service Perjury Disrupts Discovery Process

Problems relating to Plaintiff's service of the Summons and Complaint should have been straightened out before a trial date was set. However, the premature setting of a trial date and the five-days-before-trial deadline for discovery allowed Plaintiff to "run out the clock" on Defendants' request for information contained in Form (UD-106) Interrogatories 71.7 & 77.1.

Plaintiff's attorney Charles Jensen was the very antithesis of the sort of member of the Bar prescribed by Business & Professions Code § 6068(d) who "shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth." With respect to discovery, Charles Jensen acted as if he had never heard of California Attorney Guidelines of Civility and Professionalism (calbar.ca.gov.) which says:

> #9: Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange of documents.

Townsend v Superior Court (1998) 61 Cal.App.4th 1431, 1435 notes: "The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain 'an informal resolution of each issue.'" *Obregon v Superior Court* (1998) 67 Cal.App.4th 424, 434 observes:

> As *Townsend* notes, it is a 'central precept' of the Civil Discovery Act of 1986 that discovery "be essentially self-executing." (61 Cal.App.4th at 1434.) Thus reasonable and good faith efforts at informal resolution of discovery disputes are no doubt a key part of the discovery system. It is

> also a central precept of the discovery system, however, that "[i]n order to accomplish the various legislative purposes [of the discovery law], the several statutes must be construed liberally in favor or disclosure. . ." *Greyhound Corp. v Superior Court* (1961) 56 Cal 2d 355, 377; *Emerson Electric v Superior Court* (1997) 16 Cal 4th 1101, 1108.

Greyhound Corp. v Superior Court (1961) 56 Cal 2d 355, 376 observes: "Certainly, it can be said, that the Legislature intended to take the 'game' element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away 'with the sporting theory of litigation – namely, surprise at the trial.' (*Chronicle Pub. Co. v Superior Court* (1960) 54 Cal 2d 548, 561.)"

Allowing documented charges of perjury to be brushed aside, and provide a foundation for the elimination of fact-finding from the case, violates the basic principle set forth in *Hall v Superior Court* (2005) 133 Cal.App.4th 908, 919:

> Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law. When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the merits, then the policy, practice or

rule must give way.

11. Reopening of Discovery after New Trial Date

The refusal of Plaintiff's counsel to "meet and confer" as required by discovery rules, and his refusal to respond to Form Interrogatories 71.7 & 77.1, clearly supported the reopening of discovery when the trial date was shifted from June 19, 2007 to June 25, 2007 (as a result of PLAINTIFF'S frivolous challenges to Defendants' right to a jury trial). Defendant's July 22, 2007 Affidavit re Misconduct of Plaintiff's Counsel says:

> There is no such thing as a legitimate "sneak attack" in the law, and the spirit embodied in CCP Sec. 2033.220(a) should be reflected in discovery and every other aspect of presenting the facts of a case: "Each answer in response to requests for admission shall be as complete and straightforward as the information available to the responding party permits." The California Judicial Council (under the mandate of CCP Sec. 2033.710 in developing UD-106) has sought to make sure that a landlord's "hidden intentions" do not remain so, with Form Interrogatory 77.1 which says: "State all reasons that the **NOTICE TO QUIT** was served or that defendant's tenancy was not renewed and for each reason [details omitted]. Form Interrogatory 71.7 says: "Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or

> **PROPERTY** caused by the defendant or other occupant of the **RENTAL UNIT** or their guests? If so, for each report state [details omitted].

Charles Jensen asserts with respect to Defendants: "They do not however state why they delayed in serving their requests. They only make hearsay accusations that counsel evaded them. All they had to do was serve the request." (Reply Brief at 5) This does not square with this aspect of Defendants' search for the results of the March 26, 2007 Hearing described in Defendants' Consolidated Brief "It involved giving Defendants' 'Request to Bar Surprise Evidence' (CR-106) which mostly consisted of Form Interrogatories 71.7 and 77.1 (CI: 0180), directly to Kadin Blonski while the parties waited for Judge Nadler's decision on restoration of their right to a jury trial; when Mr. Blonski passed this proposed evidence sanction to Charles Jensen, he tersely remarked, 'This isn't the law.'" (4:23-25). This is indeed hearsay, but Charles Jensen does not contest the reliability of it, and it is certainly more reliable than the anonymously compiled second- and third-hand complaints in Plaintiff's Exhibit #5 (CR-144)

In *Fairmont Insurance Co. v Superior Court* (2000) 22 Cal 4th 245, 251, the California Supreme Court speaks approvingly of the resetting of the discovery time clock endorsed in *Beverly Hospital v Superior Court* (1993) 19 Cal.App.4th 1289, 1293: "It is also consistent with the legislative history of the provision and the Civil Discovery Act of 1986 of which it is part, which indicate that the purpose of the statute was to eliminate a source of discovery abuse and unnecessary trial delays caused by parties seeking continuances or postponements of trial for the sole purpose of extending the time for discovery." There is nothing more certain in the case at bar than that Charles Jensen's no-notice June 19, 2007 challenge to Defendants' right to a jury trial was NOT motivated "for the sole purpose of extending the time for discovery."

In re Marriage of Goddard (2004) 33 Cal 4th 49, 58 quotes *Au-Yang v Barton* (1999) 21 Cal 4th 958, 963:

> The policy of the law is to have every litigated case tried on its merits, and it looks with disfavor upon a party, who regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his

adversary.

One might wonder why Defendants would wish to "meet and confer" with anyone as abusive as Charles Jensen, but his abusiveness has a purpose. In Defendants' Motion for Reconsideration (at 66:15-24), which Charles Jensen treats so disdainfully, Defendants note how Charles Jensen successfully employed his abusive style to sidetrack Michael Halliwell's effort to have Judge Rushing explain her ruling on Exhibit #5 (allowing into evidence an anonymous compilation of hearsay complaints). He starts by denouncing Dr. Halliwell (who has taught university courses about legal protection of political rights) as "*somebody who is uneducated, doesn't know what he is doing, and doesn't choose to follow the law.*" (Transcript at 444:10-12) After praising Judge Rushing, Charles Jensen continues: "*The Evidence Code sets forth what your parameters are. You haven't violated any of them. But what is a continuing violation here of even the most basic preliminary discovery is completely steamrollered by somebody who can't read.*" (Transcript at 444:15-19) After bypassing the vital role of consultation noted in *Townsend v Superior Court* (1998) 61 Cal.App.4th

1431, 1434-1435 and cases cited therein, Charles Jensen continues his denunciation of Dr. Halliwell: "*He chose not to. And now, like the two boys in Southern California, Menendez, having blown their parents apart at short range with a shotgun, now they come in sentencing and they say, give us consideration for now we are orphans. He's got just about as much validity. They don't even read the code section. If they did, perhaps the words are too big and they don't understand it.*" (Transcript at 444:24 to 445:2) Charles Jensen then tries to proclaim the legitimacy of his successful campaign to vitiate *Greyhound Corp v Superior Court* (1961) 56 Cal 2d 355, 376 ("**One of the principle purposes of discovery was to do away 'with the sporting theory of litigation – namely, surprise at trial.'**") Next, Charles Jensen invents out of whole cloth sidebars in Judge Nadler's pretrial proceedings [who dealt with all ex parte applications without seeing either side] which supposedly dealt with three ex parte applications: "*Things that went on at sidebar, because Judge Nadler having seen three ex partes with absolutely no bases whatsoever, first year student, the school that you graduated from, pulled a*

stunt like that, any one of the professors would have given him a quarter and said call your mama, you're not going to make it as an attorney. And yet he indulged because he's far brighter than I am and far more patient than I am right now." (Transcript at 445:9-16) Even if it were true that a self represented litigant were to overlook one or more of the technical aspects of the discovery process, this does not make denial of any discovery appropriate. (California Supreme Court Appendix E at 6)

12. Rejection of Caselaw-Based Jury Instructions

Judge Rushing told Michael Halliwell, "you didn't file any jury instructions." He replied, "Yes, I did. Pardon me, Your Honor. I certainly intended to." (Transcript at 174:22-23) Michael Halliwell then explained:

> We have a document (CR-093 to CR-096) that has – that he [Charles Jensen] refers to as a legal treatise, that I have two proposed jury instructions with the supporting case law. The jury – proposed jury instructions are at the bottom of each one. I give the case law first, and then in bold capital letters is my proposed jury instruction number 1 – on the issue of discrimination and retaliation. And then on the issue of burden of proof, which is the second jury, proposed jury instruction, I cite appropriate case law and

> authorities, and again in capital letters is the proposed jury instruction number 2. (Transcript at 174:23 to 175:5)

Judge Rushing responded: "The document that you submitted is not – I mean, there are things in it that could be used as jury instructions, but that's – you're making me do a lot of work for you and that's not my job." (Transcript at 175:18-21) (CR-1229)

This sort of bending the rules to favor Plaintiff became an issue in Appeal Briefing (for a January 24, 2008 hearing on jury trial issues):

> Charles Jensen's Reply Brief (at 7) notes: "Judge Rushing doesn't have to assume an attorney is correct." Appellants agree, but nevertheless she said early in proceedings before her: "**I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up.**" (Transcript at 163:23-26) Charles Jensen continues: "Judge Rushing is a very experienced jurist and makes her rulings based on the state of the law." (Reply Brief at 7) In fact, the state of the law is precisely what the California Supreme Court authoritatively affirms, in its decision in *Elkins v The Superior Court of Contra Costa County* of August 6, 2007. *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1364-1365 points out the harm caused by excessive rigidity in applying deadlines:

> For example, in *Hernandez v Superior Court* (2004) 115 Cal.App.4th 1242, 1246, the reviewing court held that the trial court abused its discretion in refusing, in reliance upon a local fast track rule, to reopen discovery. "Strict adherence to these delay reduction standards has dramatically reduced trial court backlogs and increased the likelihood that matters will be disposed of efficiently, to the benefit of every litigant. [Citation.] Here, the trial court's orders promote judicial efficiency by maintaining strict time deadlines. But efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. [Citations.] Accordingly, decisions about whether to grant a continuance or extend discovery 'must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.'" (CR-1479 to 1480)

13. Tenants Barred from Hearings against Them

Defendant quotes a February 4, 2007 rent-check letter:

> I have not heard back from you about attending an upcoming Homeowners' Association meeting with me to clear the air about recent events I referred to in last month's rent check letter, as well as set some standards with the Board about

> ways to establish the true legitimacy and credibility of any future situation they may claim has occurred. (Transcript at 322:3-10)

Michael Halliwell asked: "Do you recall writing that?" (Transcript at 322:11) James Parker answered: "Yes, I do." (Transcript at 322:12) Michael Halliwell asked: "Did you receive any response." (Transcript at 322:13) James Parker answered and explained: "I did not. It was just a reminder to Gus of what I had previously asked him in the preceding letter, the last rent check letter. To go with me to a homeowners' meeting because I can't go unless I'm invited by the homeowner." (Transcript at 322:14-17) (CR-1397-1398)

Michael Halliwell asked James Parker if he recalled writing this in his February 4th letter: "Please let me know when you would be able to attend, and I'll be there." (Transcript at 322:22-24) James Parker answered, "Yes." (Transcript at 322:25) Michael Halliwell then asked, "Did he ever offer to accompany you to a Homeowners' Association meeting?" (Transcript at 322:26-27) James Parker replied, "Never." (Transcript at 322:28) (CR-1398)

In recent settlement negotiations (conducted under the cloud of Judge Nadler's expressed intention to deny a jury trial) in separate mediation by the Court's mediation service and also in Gary Nadler's intervention in his non-judicial capacity (as an experienced expert in Unlawful Detainer cases) it become unequivocally clear that during whatever time James Parker and Mike Halliwell would be allowed to remain at 1041 Copeland Creek Drive, they would not be allowed to appear at Homeowners' Association proceedings to give their side in any disputes. THIS IS TANTAMOUNT TO HANGING A SIGN ON THE PROPERTY WHOSE OCCUPANCY IS IN DISPUTE SAYING, "**THIS IS A BILL-OF-RIGHTS-FREE ZONE; ANY TENANT SEEKING TO ASSERT HIS CONSTITUTIONAL RIGHTS HERE REMAINS AT THE PLEASURE OF, AND MAY BE EVICTED AT THE DISPLEASURE OF THE MANAGEMENT.**" (CR-102:20 to CR-103:14) (CR-1140)

Judge Rushing may have felt she had authority, as a matter of state law, to make her court into an indirect enforcer of the discrimination against tenants in the complaint evaluation policy of the

Meadow Pines Homeowner's Association. However, state law CANNOT justify enforcement of such a restrictive covenant in the face of FEDERAL protection against arbitrary discrimination. In the course of invalidating such a course of action six decades ago, the U.S. Supreme Court ruled in *Shelley v Kraemer* (1948) 334 U.S. 1, 20: "*The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners between being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.*"

Judge Rushing would not allow any discussion of the implications of the restrictive covenants of the Meadow Pines Homeowners' Association, whose Kangaroo Court style of resolving disputes between homeowners and tenants, was the source of a Report (Exhibit #5) which was identified at trial by Plaintiff (see Transcript at 378:3-18) as the ONLY reason for James Parker's eviction).

Michael Halliwell tried to ask James Parker whether "there was any avenue whatsoever for you to get your side of this [dispute] into the hands of the

Homeowners' Association before they made their decision on this matter?" (Transcript at 285:4-7) Charles Jensen prevented James Parker from answering by intervening: "Objection, Your Honor. Relevance." (Transcript at 285:8) Judge Rushing ruled: "I'm going to sustain the objection." (Transcript at 285:9) (CR-1388)

Michael Halliwell started to go over "this surprise document" (the March 26th Hearing Report): "Number one, that's crossed out; isn't it?" (Transcript at 351:2-6) James Parker answered: "Yes. The name is crossed out." (Ibid. at 351:7) Michael Halliwell added: "And no matter how you hold it up to the light, you can't really figure out who that is?" (Ibid. at 351:8-9) James Parker answered: "Who the person is? No." (Ibid. at 351:10) Michael Halliwell continued: "So an anonymous person has made a charge. This person is anonymous?" (Ibid. at 351:11-12) James Parker answered: "That's what it appears to be, yes." (Ibid. at 351:13) When Michael Halliwell tried to lay a foundation for asking James Parker how he felt about being accused on the basis of such unreliable evidence, Charles Jensen objected, saying: "This is going to ask for a legal conclusion." (Ibid. at

351:16-17) Judge Rushing ruled: "It is irrelevant." (Ibid. at 351:18) (CR-1416)

14. Total Bypassing of Arbitrary Discrimination

Defendants' Transcript Excerpts quote a June 19, 2007 hearing debate about the scope of *Marina Point v Wolfson*. Defendant Michael Halliwell argued:

> Within the governing precedent, I think *Marina Point v Wolfson* is still good law, having been affirmed by the state Legislature, explicitly in the course of this amendment I'm citing, it says in *Marina v Wolfson* in negating the exclusionary policy in this case, you must recognize at the outset that California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes. This is directly out of the governing precedent recently affirmed explicitly by the Unruh Act [amendment] by the Legislature. So I believe I can stand very strong on the idea that *Marina Point v Wolfson* is still good law, the question would be how Your Honor interpreted that precedent. I don't think it's been overruled.
>
> But I have more. And that is this, the argument that the landlord is basically saying, and I've heard repeated in one way or another in Mr. Jensen's refusals to talk about any other aspect of the case, that is this, the landlord doesn't need to have a reason, he can discriminate, not against certain protected classes, but he can discriminate. If you are being discriminated against in an

> arbitrary fashion but you are outside of a protected class, too bad. That's what I think is the gravamen of what they are saying. This is very similar to an argument asserted by Proposition 14 in 1964 which had the full force of state law behind it because it was a constitutional amendment adopted by two-thirds of the people, which, of course, constitutional amendments sweep away everything in their path as far as state law is concerned. Nevertheless, there is one last line of defense, and that is the Due Process Clause of the 14th Amendment, because the Federal Constitution is supreme, and if it can be shown that the discrimination in this case violates the Federal Constitution, the Due Process Clause thereof, then we are okay, even if we are not within the safe harbor of the Unruh Act itself. (Transcript at 78:8-79:17)

Michael Halliwell continues to discuss applications of the 14th Amendment to prohibit housing discrimination:

> Now the scope of the Due Process Clause of the 14th Amendment was authoritatively interpreted by the California Supreme Court in *Mulkey v Reitman* in 1966. This was a previously pled case, that's why I wanted to show you exactly where it is, but in this decision, there was a head-on collision between Proposition 14, the full and complete expression of state authority intended to repeal the Rumford Fair Housing Act and the Unruh Act, which were both on the books at the time, and when the dust cleared the Unruh Act and the Rumford Fair Housing Act were left

> standing, and Proposition 14, if you will, lay dead on the battlefield. Because the Supreme Court of California ruled in *Mulkey v Reitman* it is now beyond dispute that the 14th Amendment protects the rights to acquire, enjoy and own property, equality and enjoyment of property rights was regarded by that amendment as an essential pre-condition to the realization of the other basic civil rights and liberties which the amendment was intended to guarantee. (Transcript at 79:18-80:11) (CR-1164-1165)

Charles Jensen insisted that only discrimination against children is covered by *Marina v Wolfson*:

> I have listened to this charade all day long. It is the only anger I'll express. If people wish to quote the law, they should quote it correctly, whether they are an attorney or a law student, or a defendant. *Marina v Wolfson* and its companion case, not surprisingly *Wolfson v Marina* has to do with discrimination of children, period. The only dicta that was given to this court is just that, dicta, it is not the holding of *Wolfson*. *Wolfson* very clearly said you can no longer rent to so many adults and so many children if they breathe air. They are persons, and that's why [in] 1982 CAA, California Apartment Association and the PBC people changed all the rental agreements and it now says people. To quote *Wolfson* for other than that is to intentionally and knowingly mislead the Court. The Court is dead on the money with the application of Unruh, and its non-application in this case. (Transcript at 81:25-82:13) (CR-1166)

One can read Judge Rushing's jury instructions in their entirety, and not realize that California has any housing discrimination laws.

15. "Too Recent" Retaliation Evidence Disallowed

Defendants cite Appeal Briefing (for the January 24, 2008 jury trial Appeal Hearing). Charles Jensen stops short in his quotation of Civil Code Sec 1942.5(a) just after listing "has given notice" as triggering a six month burden of proof obligation, while leaving out two other crucial benchmarks. Thus Defendants' Reply continues (at CR-1519):

> Charles Jensen realizes that 180 days before his seeking to recover possession of 1041 Copeland Creek Drive in an unlawful detainer action or proceeding (on June 1, 2007) is a viable "evidence window" and so is the 180 days before his causing the lessee to quit involuntarily (on July 5, 2007). In other words, Plaintiff's attorney knows that all of the evidence excluded by Judge Rushing because it was "too recent" should have been allowed to be introduced.

Judge Rushing ruled that the jury could not consider whatever role was played by Mr. Paxinos in post-notice concealment of the nature of complaints against James Parker. She said: "Well, his actions taken since the notice are irrelevant." (Transcript at 278:28 to 279:1).

16. Halliwell Eviction Notice Evidence Kept Out

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> [Defendants give] their main defense (in their Answer at CR-007): "It is clearly arbitrary discrimination in rentals to exclude someone because he knows something about his legal rights, and is willing to help a co-tenant in his legal battle. The three-day eviction notice is clearly and plainly an attempt to use retaliatory eviction to intimidate Mr. Halliwell." (CR-1136)

Judge Rushing kept Defendants from making the 3 Day Notice to Quit (which Gus Paxinos never tried to have enforced), a line of attack in their case. "Composite Brief" discusses (in Footnote 3 at CR-1642) a key exclusionary ruling:

> After a series of attempted questions and objections relating to whether Gus Paxinos would have wanted to do a credit check on any replacement for Mr. Howard and why no attempt had been made to inquire about the creditworthiness of Mr. Halliwell, the witness was asked this question about the basis for his attempting to evict him by Michael Halliwell: "In exercising your right to elect to allow me to stay or not to stay, did you make any inquiries whatsoever from any source whatsoever about any characteristic whatsoever of Michael Halliwell?" (Transcript at 224:6-9) Charles Jensen intervened: "Objection, Your Honor. Relevance." (Ibid. 224:10) Judge Rushing

ruled: "Sustained." (Ibid. 224:11) Michael Halliwell responded: "I'm asking him about his decision making process; this is a discrimination case, and I don't understand how it could possibly be irrelevant, [asking] how he is exercising his discretion." (Ibid. 224:12-15) Judge Rushing replied: "I'm sustaining the objection." (Ibid. 224:16) (Id. at 112:13 to 113:2)

17. Letting in Anonymous Compilation of Hearsay

In re Michael G. (1993) 19 Cal.App.4th 1674, 1677, says of hearsay exclusion:

> Evidence Code section 1200 provides, in pertinent part: "(a) 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at a hearing and that is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible."
>
> The purpose of the "hearsay rule" is to preserve a party's Sixth Amendment right to confront and cross-examine an adverse witness and to disallow testimony coming from a witness who is not under oath and whose demeanor cannot be observed by the trier of fact.

Defendants' December 7, 2007 Transcript Excerpts says:

> Judge Rushing did not appear to be much concerned about such principles [prohibitions in Evidence Code Sec 1200 against hearsay], since she responded to Michael Halliwell's invocation of the Sixth Amendment (which mandates every

court in this nation to respect these fundamental rules of evidence) by ruling: "It is irrelevant." (Transcript at 351:18) In a government of laws, not men and women, respect for the Constitution must transcend respect for any judge determined to brush aside such considerations. Trial by Jury is a citadel that our Founding Fathers placed in our Constitution, precisely to provide a means of protecting the Rule of Law from the sort of judicial abuse that was so familiar to them. In an effort to appeal to the sense of fundamental fairness of jurors, Michael Halliwell said (in a tone of voice that left little doubt as to whether he thought judicial prerogatives should take precedence over the Bill of Rights): "The Sixth Amendment is irrelevant. Fine" (Transcript at 351:19) Judge Rushing nipped in the bud any thoughts Michael Halliwell might have had of mentioning the California Evidence Code, with this response (Transcript at 351:20-25) to his allusion to the Bill of Rights: "You know what, Mr. Halliwell, I'm going to stop you from making those comments anymore in this courtroom. When I make a ruling that something is irrelevant, you don't comment to the jury that the Sixth Amendment is irrelevant, and I consider that contemptuous behavior. I won't tolerate it." (CR-1417)

Defendants had been trying from the time the March 28, 2007 60-Day Notice to Quit made reference to a March 26, 2007 Homeowners' Association hearing, to try to obtain a report on the results of this hearing (which was to consider the "threatening

behavior" of James Parker). When Charles Jensen refused to discuss this matter on April 12, 2007 and permanently severed communications with Defendants, we began our efforts to prevent the introduction of the March 26, 2007 Report into evidence (until and unless we had time to examine it before trial and call its author(s) as witnesses). This was one of the most important defenses which Judge Nadler promised Defendants would have an opportunity to present at trial. However, Judge Rushing gave no more heed to this application of Judge Nadler's commitment, than she did to his reserving the perjury issue for future consideration. Judge Rushing explained her refusal to rule on Defendants' exclusionary motion (directed at surprise evidence within the ambit of Form Interrogatories 71.7 & 77.1):

> Normally – let me just explain something. We're in the middle of a jury trial. I never have jurors outside waiting. This is not the time to do this. That's not what we do to jurors. I never keep jurors waiting. I don't care what anyone wants to file, and I don't know that these are fileable, in proper form or whatever, but I'm just telling you

right now, once a jury trial started – you wanted the jury, you have got them. They are out there. I'm not keeping them waiting. We're going to put on the case. If there's a break, we can let them go later, and I can consider some papers if you would like. (Transcript at 316:23 to 317:5)

There was a final opportunity to focus Judge Rushing's attention on Defendants' right to know the nature of the charges against them (which were certain to have been addressed in the March 26, 2007 "Report"). Charles Jensen said to Judge Rushing: "Your Honor, before we begin, my – the parties – may we do a sidebar on a procedural matter? It will make a difference in time." Judge Rushing replied: "Yes." Charles Jensen called over Defendant to participate in an unrecorded (Conference at the Bench). (June 25, 2007 Transcript at 198:2-7)

Defendants were not successful in changing Judge Rushing's unwillingness to protect what they viewed as their evidentiary rights, but she seemed to have second thoughts about keeping our efforts out of the record, when she made this offer the next day: "We are going to stay on the record to permit the parties to place on the record anything that was said

at sidebar that wasn't argued on the record." (June 26, 2007 Transcript at 442:8-10) Defendant made the handling of Exhibit 5 the first issue he raised, although he could not remember its number: "I had a motion to strike the March 28th letter with the redactions in it that – I'm not sure of the exhibit number. March 28th should identify it clearly enough. On the grounds that it was improper due to the anonymous nature of the complaint and other procedural reasons." (Ibid. at 442:23-28) Judge Rushing addressed every OTHER issue raised by either side, but then backed off from trying to justify her handling of Exhibit 5. She simply wound up the discussion by saying: "I'm not making any further rulings than that. We are going to be in adjournment." (Ibid. at 447:18-20)

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings, which compared her very lax standard for admitting hearsay offered by Plaintiff, to her total exclusion of any second hand report offered by Defendants:

> Judge Rushing [as part of document dump which Defendant described at the time: "They just dumped a pack of letters, undifferentiated, saying here's 24 letters, plop." (Transcript at 242:27-28)]

admitted a report filled with third-hand hearsay complaints made by unspecified persons, compiled into a report by an anonymous person, and put into evidence as a result of it being conveyed by a third person (not available for cross examination) who wrote on the bottom of the anonymous report "This was submitted by a neighbor." (Exhibit 5, filed by Defendants after trial at CR-144). However, when Michael Halliwell asked James Parker (Transcript at 299:21 to 300:6) about a communication to him by "Chris and Christine, the people who lived next door to me," he was not allowed to answer this question: "Did either of these people ever communicate with you that they received any satisfaction on this basic grievance?" Charles Jensen interrupted at this point, saying: "Objection, Your Honor. Any response will be hearsay." Judge Rushing responded: "Sustained." (CR-1239)

18. Crucial Impact of Anonymous Hearsay Report

Appellants' Opening Brief discusses Judge Rushing's biased handling of Exhibit #5:

> After rejecting Defendants' motion to strike Plaintiff's anonymous compilation of hearsay complaints, Judge Rushing curtailed their right to discuss in detail the alleged defects of this Report. Michael Halliwell was eliciting testimony on this page of complaints from James Parker when he said: "Moving on to number B (of the second complainer being discussed)" (Transcript at 367:10). This was the second specific charge made by the last redacted name in the document

> (it is not clear how many different individuals were involved, four of the felt-tip cross-outs were of names of exactly the same length). At this point 16 lines of the 39 lines (CR-144) setting forth various complaints had been covered, the remaining 23 lines included ALL of the complaints made by persons whose locations were specified (CR-145) on an accompanying map. (CR-1336)

Defendants' December 7, 2007 Transcript Excerpts further documents Judge Rushing's shielding of Exhibit #5 from full examination:

> Judge Rushing interrupted James Parker's discussion of Exhibit #5 (Transcript at 355:17-18) and Michael Halliwell protested: "I want to go through the evidence." (Ibid. at 355:19) Judge Rushing responded: "Actually, sir, I have the right to control the means and manner, and also there's an Evidence Code section called 352 which prevents repetition and cumulative evidence and things that are more time consuming than probative. The jury is only here for a limited time. We need to get through the rest of this case." (Ibid. at 355:20-26) Michael Halliwell responded: "Considering the critical nature of this document, I'd like to be able to go through it line by line. Are you ruling that out? (Ibid. at 355:27 to 356:1) Judge Rushing answered: "I am." (Ibid. at 356:2) (CR-1421)

Appellants' Opening Brief points out an important effect of Judge Rushing's handling of Exhibit #5:

> Michael Halliwell explained his purpose: "I'm trying to tie together." (Transcript at 367:20) He continued to note the importance of a clear picture based on as much evidence as possible, but Judge Rushing insisted: "In the interests of time, I'm going – you can ask one more question on this, then we're moving on." (Ibid. at 367:25-26) (CR-1337)

Defendants' December 7, 2007 Transcript Excerpts says how Judge Rushing enhanced the obscurity of Exhibit #5:

> In fact, all of the names found in this compilation of complaints were redacted. By preparing a map showing the location of complainers who were not named and REDACTED, Charles Jensen was attempting to counteract the appearance of anonymity, yet not allow the Defendants time enough to make any actual identifications. However, by the time Defendants were about to start with the map-location identified complainers, Judge Rushing pulled the rug out from under Defendants [with her invocation of Evidence Code Sec 352]. (Transcript at 367:25-26) (CR-1411)

Defendants' March 20, 2008 reconsideration motion tells why Exhibit #5 had a decisive role in the case:

> From the perspective of Defendant Parker's right to confront his accusers and to cross-examine them, those who made the complaints in Exhibit #5 were totally anonymous. Nor is there the slightest doubt that these complaints are second

and third hand hearsay, as any judge who looks at them can plainly see. The "neighbor" who compiled these complaints about "Resident 1041" on the "WeekEnd of 2/17, 18/2007" does not refer to himself or herself in any fashion whatsoever. The devastating impact of this compilation of complaints is obvious, and Charles Jensen acknowledges its decisive nature. After Judge Rushing ruled against Defendants' motion to exclude this document, Charles Jensen recalled his client Gus Paxinos to the stand and this exchange ensued:

> Q. Did you read the allegations of the seven or eight different residents?
>
> A. Yes.
>
> Q. In terms of what they allege Mr. Parker or somebody in 1041 did?
>
> A. Yes.
>
> Q. Did that bother you? Did it bother you?
>
> A. Well, of course.
>
> Q. What, if anything, did you do then?
>
> A. I called you, and I brought this to your attention.
>
> Q. Was it the following day on the 30th that you served the 60- day notice?
>
> A. Yes.
>
> Q. Was there any other reason that you served the 60 day notice other than what's in that letter?

A. No. (June 26, 2007 Transcript at 378:3-18) (Id. at 64:12 to 65:10) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 21-22)

19. Evasions re Backing Off from Proving Cause

Judge Rushings' June 26, 2007 Courtroom Minutes say "Mr. HALLIWELL requests Defendants be allowed to enter Plaintiff's complaint into evidence. Court DENIES Defendant's request (explaining complaints are not by the rules of evidence permitted in evidence)." (CR-324:4-5) Judge Rushing referred to a Notice of Hearing, slated to take place on March 26, 2007, as noted by Plaintiff's March 30, 2007 Complaint, which said (CR-039): "PER THE ATTACHED, THIS TERMINATION IS FOR CAUSE." The attachment (CR-040) said "VIOLATION REPORTED: 'Ongoing threatening behavior of your tenant towards other residents'" Judge Rushing turned to Charles Jensen and said: "I notice that in your notice, you listed cause." (Transcript at 172:25) Charles Jensen responded: "*That is correct, Your Honor.*" (Ibid. at 172:26) Judge Rushing asked: "Is that the theory you're proceeding on?" (Ibid. at 172:27-28) Charles Jensen answered: "*It is not, Your Honor, simply*

because the code section says no cause is needed." (Transcript Ibid. at 173:1-2) Judge Rushing responded: "Right." (Ibid. at 173:3) Defendants tried to point out the evasiveness involved in withholding the hearing results which Plaintiff had in hand when he filed his complaint, and in pulling back from trying to establish the validity of the cause listed in their complaint. Judge Rushing ruled out such a line of questioning based on Plaintiff's Complaint, which Defendants tried to introduce into evidence. Judge Rushing said, "Well, Complaints aren't entered into evidence." (Transcript at 211:6-7) Michael Halliwell protested: "Well, but he signed it." (Ibid. at 211:8) Judge Rushing insisted: "Sir, I have just made a ruling." (Ibid. at 211:9) (CR-040)

20. No Contract Violation Means No Fees Shifting

The Plaintiff started out with a contract claim, and tried to secure a verdict by Judge Nadler on that basis, with a June 19, 2007 no-notice motion for summary judgment (in violation of CCP Sec 1170.7). But Judge Nadler never ruled on this motion and Charles Jensen never renewed it before Judge Rushing, as Judge Nadler suggested he might (probably because Charles Jensen no longer had the

element of surprise). *Xuerab v Marcus & Millichap, Inc.* (1992) 3 Cal. App.4th 1338, 1341-1342, ruled out this sort of "bait and switch" method of securing fees because "although the buyers initially sued for breach of contract, they did not go to trial on that basis." Moreover, *Exxess Electronixx v Heger Realty Corp.* (1998) 64 Cal.App.4th 698, 708, citing numerous passages in *Santisas v Goodin* (1998) 17 Cal 4th 599, affirming that "*the question of whether to award attorney's fees turns on the language of the contractual provision, i.e., whether the party seeking fees has 'prevailed' within the meaning of the provision and whether the type of claim is within the scope of the provision.*"

James Parker's supposedly non-existent Opposition (at CR-416) points out why Charles Jensen was entitled to NO fees at all, because Jensen explicitly stated that his theory of the case was NOT seeking to prove cause, i.e. a violation of the rental agreement, "<u>because the code section says no cause is needed</u>" (see June 25, 2007 Transcript at 172:25 to 173:3). Parker cites *Walters v Marler* (1978) 83 Cal.App.3d 1, 27-28, quoting *McKenzie v Kaiser-Aetna* (1976) 55 Cal.App.3d 84, 89-90,

rejecting the idea that the Legislature in enacting Civil Code sec 1717 meant to include "all provisions in the contract allowing for attorney's fees, whether or not those fees are incurred to enforce the provisions of the contract." It states that the only reasonable interpretation of section 1717 is "the allowance of attorney's fees only when such fees are incurred to enforce the provisions of the contract." Parker's August 22nd Memorandum points out: "The jury has found NO breach of contract and the contractual language (clause #13 in the rental contract allows attorney's fees only 'to enforce any part of this agreement.')"

21. Evasive Maneuvers re Status of Fees Motion

When a hearing was held on Plaintiff's $10,000 attorney fees motion, Charles Jensen followed his uniform policy in fees matters, of saying NOTHING about the underlying merits. Before the September 25, 2007 fees hearing took place, Charles Jensen made a determined effort to win by evasive maneuvering, which flouted Local Rules: **a)** Plaintiff's attorney refused to "meet and confer" to discuss possible settlement "in accordance with applicable law" (as required by Local Rule 5.5); **b)** Charles

Jensen refused to bring his July 3, 2007 fees motion before the court by listing the known (August 28, 2007) time and place of the hearing on the face sheet (as required by Local Rule 18.8); and **c)** he did not provide an endorsed filed copy of the motion when filed (promised by a July 3, 2007 letter of conveyance, that described its document, as an unfiled motion being given to Defendants to facilitate negotiation over the amount of fees).

Plaintiff's evasive maneuvering violated the fundamental principle cited from *Adams v Murakami* (1991) 54 Cal 3d 105, 120:

> The issue is not merely a question of trial strategy. As our former colleague Justice Peters aptly put it, "**The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits**, but a method devised by a civilized society to settle peaceably and justly disputes between litigants. The rules of the contest are not an end in themselves." (*Simon v City of San Francisco* (1947) 79 Cal.App.2d 590, 600)

When the Appellate Branch issued its unexplained Order Upholding Judge Rushing's unexplained $10,600 fees award, it stretched deference to a trial court's discretion beyond what is acceptable under well established governing precedent:

> Although discretion is vested in the trial judge, that discretion is not unfettered. It cannot be exercised arbitrarily, but must be an impartial discretion to be exercised in conformity with the spirit of the law and in a manner to subserve the ends of substantial justice. (*Longshore v Pine* (1986) 176 Cal.App.3d 731, 737)

22. False Tentative Ruling "No Opposition" Claim

James Parker refuted the supporting rationale of Judge Rushing's award of $10,000 in attorney's fees to Plaintiff in his Affidavit Re Charles Jensen's Proposed Judgment After Order (CR-523 to CR-524):

> So that there can be no mistaking these crucial points, I hereby emphasize for the record that Judge Rushing did indeed rule [in conformity with **Local Rule 2.2D**] with respect to the hearing on Mr. Jensen's "Post-Trial Motion for Attorney's Fees" (at CR-296): "**There will not be a tentative ruling – mandatory appearances will be required.**" There is no doubt that Mr. Jensen remembers this ruling, and this is why he showed up at 8:30 a.m. on Tuesday August 28, 2007 in Division 19, without Defendants' needing to remind him before 4:00 p.m. the preceding day. In his proposed JUDGMENT AFTER MOTION, Charles Jensen states: "Defendant JAMES PARKER did not oppose the motion." There is no doubt that Mr. Jensen knows that this statement is FALSE. Jensen probably ordered Mr. Blonski to sever e-mail communications with Defendants, but that did not prevent his becoming aware of Defendants' e-mail in spite of this ban (CR-458)

sent 9:24:54 on Mon, 27 Aug to kadinblonski @hotmail.com captioned "Attention Charles Jensen." The first sentence of this e-mail states: "Today's Court Filing provides one attached new document (dated August 27th infra, and the August 22nd documents infra, previously sent to you via e-mail only)." Mr. Jensen certainly knows (since he had six full days to study these documents before the hearing) that the listed "August 22, 2007 DEFENDANT'S REVIEW OF SUBTERFUGES RELATING TO ATTORNEY'S FEES" was not accidental in its use of the singular in "DEFENDANT'S" and that **the Defendant who signed this August 22, 2007 Opposition to Charles Jensen's fees motion was JAMES F. PARKER.**

Soon Judge Rushing's bad faith became even more clear.

23. Filing Ban in Order Vacating Tentative Ruling

Judge Rushing's next move, in her Order of September 5, 2007, was to make sure that James Parker could not cure his alleged failure to oppose the motion. Michael Halliwell's "Affidavit re Handling of Attorney Fees Hearing" discusses what should have been an August 28, 2007 Fees hearing, and Judge Rushing's subsequent explanation of her cancellation of it:

Judge Rushing said when she vacated her Tentative Ruling that she "inadvertently"

overlooked that she had informed the parties that there would be no tentative ruling in the case. This inadvertence was deliberate since Judge Rushing certainly saw that Charles Jensen and the Defendants both showed up on August 28, 2007 expecting a hearing to take place. (We were in the front row and had announced our presence to the clerk in Court-room 19.) Judge Rushing rearranged the order of cases posted outside the courtroom that day, so that as she called one by one all the cases listed after MCV 191306 were completed, before she called a recess and swiftly left the courtroom. When I stood up and clearly said "Your Honor," the bailiff demanded that I immediately go out into the hallway. I informed the bailiff that Judge Rushing's own order said that there would NOT be a tentative ruling and that mandatory appearances would be required, and offered to show him the order. The bailiff went back and checked with Judge Rushing, and returned with an order that we leave the premises at once or be arrested. Charles Jensen was standing right next to Michael Halliwell and James Parker while all this was going on, and could easily have returned to the court-room with us and taken part in oral argument, had Judge Rushing not insisted on banishment instead. On September 25th, Judge Rushing again employed her strategy of deliberate inadvertence and refused to allow me to point out the inconsistency of her new position on standing with her own prior rulings. She would not allow me to address the court on any subject. When I said two words to correct James Parker's reference to Judge Rushing's "prior motion" (when he clearly meant

> "prior ruling" the bailiff threatened me with immediate banishment from the courtroom if I said another word.
> (CR-707:20 to CR-721:6)

To combat reluctance by higher courts to believe that a trial judge would deliberately flout Local Rules, and would try to prevent litigants from documenting what she was doing, Defendants' response to the Order of September 5, 2007 attached a copy of the actual order and Local Rule 2.2D:

> Attachment #4 is Judge Rushing's Order of September 5, 2007, which was a temporary retreat in the face of the explicit terms of Local Rule 2.2D (quoted in full in Attachment #11) that "All law and motion matters in unlawful detainer actions shall be scheduled on the Unlawful Detainer Law & Motion Calendar" AND "No tentative rulings will be made available for matters on this calendar." Appellants' April 18, 2008 Petition (at 14:8-17) discusses how Judge Rushing tried to PREVENT James Parker from curing the "defects" of memoranda opposing an award of attorney's fees which were submitted by Defendant Halliwell, by resubmitting the same arguments in his own name. Her Order of September 5 states: "No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007." As Appendix B Transcript Analysis notes (at 6:15-16) when James Parker came to the September 25, 2007 hearing and said "I have some papers to put in, if I may?" Judge Rushing

replied "No, it's too late for that, sir." (Transcript at 330:26-28) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 24)

24. Evasion of Plain Meaning of Notices of Appeal

Judge Rushing's evasiveness became WORSE in the enforcement phase of her $10,000 fees award. After Judge Rushing cancelled the November 13, 2007 hearing (without notice to the parties, who found out only when they showed up at the scheduled starting time), she backed away from her attempt to set a date for the hearing (November 14, 2007) which was still well short of the required ten days notice.

When the rescheduled Claim of Exemption hearing took place on November 20, 2007, Charles Jensen cited no precedents to contradict the holding of *Ziello v Superior Court* (1999) 75 Cal.App.4th 651, 654-655, and CCP § 916(a) & 917.1(d) that a motion consisting only of attorney's fees and other costs was not enforceable during the pendency of an appeal, without the appellant having to post an undertaking (appeal bond). It turned out that Charles Jensen's ground for opposition was an attempt to do an end run around CRC 8.750(a) that requires Notices of

Appeal to be liberally interpreted in favor of their sufficiency. In spite of James Parker's totally unambiguous support for Defendants' appeals from the $10,000 attorney's fees award, Charles Jensen was able to convince Judge Rushing that Defendants' appeal from the initial award of the $10,000 should be ignored, because it was vacated and reinstated after the appeal. This is a direct contradiction of *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997. Charles Jensen convinced Judge Rushing to disregard Defendants' appeal from the renewed award of the $10,000 on the ground that only Defendant Halliwell had signed it. This quibble is rejected in *Ehret v Ichioka* (1967) 247 Cal.App.2d 637, 640-641. Judge Rushing further trampled on the rule of law by refusing to allow James Parker any opportunity to respond to Charles Jensen's grounds, once they had been disclosed at the hearing. This was a direct violation of CCP Sec 703.580 (a) & (c).

25. Unfairness of No-Notice Switch on Standing

Judge Rushing's no-notice reversal of her recognition of Defendant Michael Halliwell's right to seek a continuance of a fees hearing (and granting

his motion), in the face of Plain-tiff's explicit challenge to Defendant Halliwell's standing, constituted a denial of Due Process of Law to Defendant James Parker, when he was forced to defend aspects of the case previously managed by Defendant Halliwell (without ANY opportunity to prepare to do so).

Judge Rushing cited no authority for her standing edict:

> Under California law, if one is self-represented, a self represented person is the only one who may speak for himself or herself. Other persons may show up as support persons and give information and advice to the person but this is the exact same rule in every case. I'm not deviating from it, and so what I am going to say is if Mr. Parker would like to address the motion for attorney's fees, he may do so. (Transcript at 466:2-8)

Judge Rushing would not even let Dr. Halliwell speak:

> Michael Halliwell: "Could I address this matter?" (Ibid. at 466:9)
>
> Judge Rushing: "Excuse me. First, I'd appreciate you not interrupting me. I'm addressing this question to Mr. Parker. I'm saying, Mr. Parker, would you like to argue against the imposition of attorney's fees?" (Ibid. at 466:10-13)

> James Parker: "I would, Your Honor, but not at this time. I'm not prepared. I did not think this was going to happen. My belief was that Mr. – Dr. Halliwell was going to be able to argue this." (Ibid at 466:14-17)
>
> Judge Rushing: "I don't understand why you would think this in light of – " (Ibid. at 466:18-19)
>
> James Parker: "Because you vacated your tentative ruling." (Ibid. at 466:20)
>
> Michael Halliwell: "Could I address it." (Ibid. at 466:21)
>
> Judge Rushing: "No. I'm talking to Mr. Parker." (Ibid. at 466:22)
>
> Judge Rushing again invokes unspecified legal authority:
>
> > Mr. Parker, you do not – when persons are self represented, the Court is under no obligation to teach them how to practice law or how to conduct their case. The statements I have just made are in the law library in all the practice books, and I'm inviting you, Mr. Parker, at this time if you wish to argue against the imposition of attorney's fees against you, to do so. (Ibid. at 466:22-28)

Judge Rushing then turned to Defendant Michael Halliwell and said: "And I am sorry, Mr. Halliwell, I'm not going to permit you to say anything in this argument at this hearing." (Ibid. at 466:28 to 467:2)

Michael Halliwell responded: "Not even on the central issue on whether I should be allowed to speak?" (Ibid. at 467:3-4) Judge Rushing replied: "No, it's the same rule." (Ibid. at 467:5) Michael Halliwell continued: "Well, I believe Your Honor is mistaken. I object for the record." (Ibid. at 467:6-7) Judge Rushing terminated the discussion: "Mr. Halliwell, I've just made my ruling." (Ibid. at 467:8) (May 5, 2008 Supreme Court Appendix B at 4:3 to 5:13)

James Parker protested the lack of warning that he would have to present oral argument:

> Well, I would take exception, Your Honor, to this because at this point I feel I'm being railroaded here. I'm sorry, but it's fair to give me the opportunity. I had no idea I was going to have to be here and give oral argument, and I cannot speak extemporaneously on this and serve myself well at all or serve myself period, Your Honor. So please, give me the opportunity. I will only ask one more time for an extension on this so that – this is $10,000. You know, to me, Your Honor – that may not be much to you but it's very much to me, and I would like the opportunity, if I'm forced to address the Court solely by myself on this, to be given the opportunity to – to prepare, at least something that I can read, you know. Give me a few weeks to do this, Your Honor, please. (Transcript at 473:24 to 474:9)

After trying to blame Defendants for the two prior hearing postponements, Judge Rushing ruled: "I don't see the basis for a continuance." (Transcript at 475:7-8) Judge Rushing would not allow James Parker to explain why Defendant Halliwell was not acting as an attorney, but as an equally injured Defendant under their equal cost sharing agreement. Charles Jensen had previously said: "Plaintiff has no oral argument to offer the Court." (Transcript at 472:21-22) So, Judge Rushing shut down the fees hearing without saying a word about the merits:

> The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,000 in attorney's fees against Mr. Parker only. (Transcript at 475:27 to 476:2)

At the next fees hearing on the day after we cited this ruling in Appendix B), James Parker asked Judge Rushing: "Since the Court has never cited any case law as to why Michael Halliwell has not been allowed to speak, I would ask the Court to cite some case law as to why not." (May 6, 2008 Transcript at 5:10-12) Judge Rushing replied: "I'm not required to do so and I decline that request." (Ibid. at 5:13-14.)

(2)

Supreme Court, U.S.
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No. 09-___

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

APPENDIX, VOLUME III

Michael J. Halliwell & James F. Parker
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April 20, 2009

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Appellate Branch Opinion of March 6, 2008

In this very simple unlawful detainer case[1] the trial court's judgment is AFFIRMED.[2] Appellants fail to demonstrate any error by the trial court,[3] let alone any *reversible* error.[4]

This was an unlawful detainer case.[5] Plaintiff/Respondent Chrysanthe ("Gus") Paxinos (landlord)[6] filed an unlawful detainer action against Defendants James PARKER and Michael HALLIWELL.[7] The action was based on a breach of the rental agreement[8] – i.e., tenant James Parker subletting to Michael Halliwell in violation of the rental agreement.[9]

The case was originally before Judge Nader,[10] but was then passed to Judge Rushing for trial.[11] A jury trial was held,[12] and the jury returned a verdict in favor of Plaintiff/Respondent[13] and against Parker[14] and Halliwell.[15]

This is an appeal from the unlawful detainer judgment entered against Appellants/Defendants James Parker and Michael Halliwell.[16]

The record on appeal consists of those items specified in CRC 8.754 et seq. and a transcript from a June 19, 2007 hearing before Judge Nadler[17] and transcripts from the June 25/June 26 trial.[18] There is some confusion as to the nature of all the appeals,[19] and who has filed the appeals.[20] This reviewing Court is treating this as an appeal by both defendants from the judgment[21] and from any post-judgment orders.[22]

Appellants' arguments are not a model of clarity,[23] and are spread out in the 100+ pages of material[24] filed by Appellants.[25] Appellants' briefs are rambling and disjointed.[26]

However, it appears the following claims of error have been made:[27] 1) There were errors in setting the trial date;[28] (2) there were defects regarding service of the summons/ complaint;[29] (3) Plaintiffs evaded discovery;[30] (4) the trial court erred in denying Defendants' motion to continue case to reopen discovery;[31] (5) the trial court erred in denying defendants' motion to exclude "Exhibit 5";[32] (6) the trial court erred in failing to instruct the jury on the "Unruh Act";[33] (7) the trial court unfairly circumscribed Defendants' input on jury instructions;[34] (8) the trial court blocked key evidence regarding retaliatory eviction;[35] (9) the trial court violated Local Rule 2.2D and 5.5A & B in consideration of attorney's fees;[36] and (10) the trial court stripped Michael Halliwell of standing with no legal foundation (regarding attorney fee issue).[37]

Plaintiff/Respondent has filed an Opposition Brief addressing the issues raised by Appellants.[38] In summary, Plaintiff argues the appeal is procedurally defective in form,[39] and substantively has no merit whatsoever.[40] This court agrees.[41]

Appellants complain of alleged procedural irregularities in the trial setting procedures.[42] Appellants have failed to show any irregularities.[43] Furthermore, Appellants ultimately were

given a jury trial**[44]** (after Judge Nadler reconsidered an earlier ruling)**[45]** as they wanted.**[46]** Assuming arguendo any irregularities,**[47]** Appellants fail to show any reversible error.**[48]**

Appellants appear to argue that the trial court lacked jurisdiction**[49]** because of defects in the proof of service,**[50]** and therefore the judgment is void.**[51]**

Both Appellants filed an Answer.**[52]** Although their answers did contain one paragraph alleging proof of service defects,**[53]** their Answers also contained answers on the merits of the case,**[54]** and also requested affirmative relief.**[55]** Appellants then participated in the action,**[56]** and never filed a motion to quash.**[57]** The Answers constituted a general appearance.**[58]** A general appearance operates as consent to jurisdiction of the parties;**[59]** dispensing with the requirement of service of process,**[60]** and curing defects in service. *Dial 800 v Fesbinder* (2004) 118 Cal.App.4th 32, 52.**[61]**

Appellants never established any defects in service.**[62]** Even if there were defects,**[63]** Appellants made a general appearance in this case and therefore submitted to the trial court's jurisdiction.**[64]** There was no evasion of discovery.**[65]** Appellants never served any discovery requests.**[66]**

At the beginning of trial,**[67]** Appellants orally moved for a continuance to reopen discovery.**[68]** The motion was denied.**[69]** Appellants fail to demonstrate that the trial court abused its discretion in denying the continuance,**[70]** or denying a request to reopen discovery.**[71]**

At trial,[72] Plaintiff introduced "Exhibit 5"[73] (a letter from the Homeowners' Association).[74] No objection was made to its admission into evidence,[75] and the trial court admitted it into evidence.[76] Later,[77] Appellants made a motion to strike "Exhibit 5" as an anonymous letter,[78] claiming it was hearsay.[79]

The letter was admitted into evidence without objection.[80] Appellants waived any claim on appeal.[81] Furthermore, Appellants have not shown that the trial court erred in denying,[82] subsequent to the letter's admission into evidence,[83] their motion to strike it.[84]

Additionally, assuming arguendo some error occurred,[85] Defendant fails to demonstrate why a reversal of the judgment is required.[86]

Appellants fail to demonstrate any error in failing to instruct the jury on the Unruh Act discrimination claim.[87] There was no evidence of discrimination in violation of the Unruh Act.[88] The trial court allowed defendant to argue retaliatory eviction[89] and provided the jury with instructions regarding the defense of retaliatory eviction.[90] The jury rejected the retaliatory eviction defense.[91] The trial court did not block admissible evidence,[92] and did not fail to give proper jury instructions.[93]

(Appellants' arguments regarding attorney fees (post judgment) are contained in their "Consolidated" brief.)[94]

Respondent argues these assertions relate to a motion for attorneys fees that concerned only Defendant Parker.**[95]** Respondent argues that Mr. Parker never appealed the motion for attorney's fees.**[96]** Therefore, Respondent argues the issue is not properly before the Appellate Panel.**[97]**

As noted earlier, it's unclear from the several notices of appeal who was appealing what.**[98]** Assuming arguendo that Parker has actually appealed the attorney fee award against him ($10,000),**[99]** there is no basis for reversing the award.**[100]** Parker never opposed the motion for attorney fees.**[101]** Defendant Halliwell, who was not Parker's attorney,**[102]** and against whom no fees were sought,**[103]** did not have standing to oppose the motion (against Parker) for attorney fees.**[104]**

Appellants fail to demonstrate any error,**[105]** let alone any reversible error.**[106]** The decision of the trial court is affirmed.**[107]**

Defendants' Footnotes to March 6, 2008 Order

A. Introduction (overview & listing of parties)

1. The opinion begins (1:13): "In this very simple unlawful detainer case"

This may have seemed to be a potentially simple case to Charles Jensen, on April 25, 2007 when property manager (de facto landlord) Gus Paxinos showed him a letter from Michael Halliwell (that announced Dr. Halliwell's intention to stand up for James Parker's right to confront his accusers and know the nature of the charges against him, which were mentioned in the 60-Day Notice to Quit which Mr. Parker had received on March 28, 2007). However, Plaintiff's counsel "steamed across his own towline" (as in the film Caine Mutiny) by persuading Judge Rushing to reject ALL evidence earlier than October 2, 2006 (six months before the March 28, 2007 60-Day Notice) or after March 28, 2007, thereby making the circumstances of the issuance of the 3-Day Notice near the end of April 2007 ENTIRELY IRRELEVANT. This is contrary to explicit provisions of Civil Code Sec 1942.5, but this is the way Judge Rushing required the case to be adjudicated.

Defendants' January 24, 2008 Appeal Transcript Appendix states (5:15-19):

> Appellants' Reply Brief (at CR-1480:17-20) protests Judge Rushing's faulty time limits: *Hall v Superior Court* (2005) 133 Cal.App.4th 908, 919 notes a fundamental principle:

> Court rules should be designed to accomplish the ends of justice, to protect rights, and to implement the substantive law. When a policy, practice or rule operates instead to defeat these purposes, and deprives an accused of a fair trial or determination on the merits, then the policy, practice or rule must give way.

Defendants' January 24, 2008 Appeal Transcript Appendix cites further caselaw:

> Defendants protested (CR-1911:2-6) Judge Rushing's "use of arbitrary time cut-offs, on the calendar and in the courtroom" and cited *Schweiger v Superior Court* (1970) 3 Cal 3d 507, 514:
>
> > Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the "tail wagging the dog." (Id. at 6:20-25):

Defendants' January 24, 2008 Appeal Transcript Appendix cites another key ruling:

> Appellants' January 14, 2008 summary brief (at CR-1596:20-23) cites *In re Marriage of Goddard* (2004) 33 Cal 4th 49, 58 quoting *Au-Yang v Barton* (1999) 21 Cal 4th 958, 963:

> The policy of the law is to have every litigated case tried on its merits, and it looks with disfavor upon a party, who regardless of the merits of the case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. (Id. at 8:1-6):

2. The opinion states (1:13): "the trial court's judgment is AFFIRMED."

Judge Rushing NEVER cited a supporting precedent in the entire time she has been handling *Paxinos v Halliwell & Parker*, and never issued an order of her own after September 5, 2007. (This order vacated her Tentative Ruling issued in violation of Local Rule 2.2D, which she had indicated she would support, and "banned all further papers of any kind" by EITHER James Parker or Michael Halliwell.) Henceforth she only signed totally unexplained orders presented to her by Charles Jensen. Therefore it has been difficult to understand the scope of this affirmation, and very hard to come to grips with it.

3. The opinion states (1:13-14): "Appellants fail to demonstrate any error by the trial court."

The burden of demonstrating an error in prior proceedings rests on Appellants. But the Appellate Branch is required to maintain the appearance of fairness, and cannot simply brush aside Appellants arguments which seek to demonstrate that errors have occurred.

In re Ramirez (2001) 89 Cal.App.4th 1312, 1320 fn5 and *Housing Authority of Monterey County v Jones* (2005) 130 Cal.App.4th 1029, 1039, 1042 cite key constitutional and California Rules of Court provisions, which emphasize the vital importance of the independence of the appellate division of unified Superior Courts, and the need to avoid procedures, which "would threaten the apparent or perceived independence and objectivity of the reviewing court in limited-jurisdiction cases."

4. The opinion states (1:14) [There was no error] "let alone any *reversible* error."

This case has been a pitched battle over fundamental procedural rights from the outset. Three early and middle-stage issues are dominant: **A)** The Sonoma County Superior Court's policy of giving the earliest available trial date to the landlord when a request is filed (without allowing any opportunity for input by the tenant); **B)** The use of perjury by Plaintiff's attorney with regard to his service of documents (thereby eliminating discovery by further distorting the case timeline) and the lack of opportunity for Defendants to present their evidence that key documents were NEVER served and certainly not placed in the Case File until long after their current date stamps suggest that they were filed; **C)** Allowing the use at trial of an anonymous compilation of second and third hand hearsay complaints at trial (instead of answers to Form Interrogatories 71.7 and 77.1, which Defendants had repeatedly tried to secure). (Defendants' Petition (S163276) seeking review re March 6, 2008 Decision at 2)

5. The opinion states (1:16): "This was an unlawful detainer case."

Appeal Briefing discusses Judge Rushing's openly biased procedural rulings:

> Charles Jensen's Reply Brief (at 7) notes: "Judge Rushing doesn't have to assume an attorney is correct." Appellants agree, but nevertheless she said early in proceedings before her: "**I've never tried an unlawful detainer case, a jury trial, so if there's any difference of what I'm saying, I expect Mr. Jensen to speak up.**" (Transcript at 163:23-26) Charles Jensen continues: "Judge Rushing is a very experienced jurist and makes her rulings based on the state of the law." (Reply Brief at 7) In fact, the state of the law is precisely what the California Supreme Court authoritatively affirms, in its decision in *Elkins v The Superior Court of Contra Costa County* of August 6, 2007. *Elkins v Superior Court* (2007) 41 Cal 4th 1337, 1364-1365 points out the harm caused by excessive rigidity in applying deadlines:
>
> > For example, in *Hernandez v Superior Court* (2004) 115 Cal.App.4th 1242, 1246, the reviewing court held that the trial court abused its discretion in refusing, in reliance upon a local fast track rule, to reopen discovery. "Strict adherence to these delay reduction standards has dramatically reduced

> trial court backlogs and increased the likelihood that matters will be disposed of efficiently, to the benefit of every litigant. [Citation.] Here, the trial court's orders promote judicial efficiency by maintaining strict time deadlines. But efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. [Citations.] Accordingly, decisions about whether to grant a continuance or extend discovery 'must be made in a atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.'" (CR-1479 to 1480)

6. The opinion states (1:16-17): [The] "Plaintiff/ Respondent [was] Chrysanthe ("Gus") Paxinos (landlord)"

The Appellate Branch confuses the property manager, Gus Paxinos, with his daughter, Chrysanthe Paxinos, who is the landlord (for estate planning purposes). In spite of a provision in Local Rule 2.2 that a Property Manager cannot act in behalf of the property owner in an unlawful detainer action, Defendants never made an issue of the signing of key documents by Gus Paxinos. This was reciprocated by the opposing party and the Court, in allowing either Defendant to sign documents and speak for the other at their discretion, throughout

Judge Nadler's proceedings and the first two months of Judge Rushing's proceedings, until Judge Rushing concluded that resorting to technicalities was the only basis on which she could find in Charles Jensen's favor on the fees issue. In upholding a resort to technicalities, the Appellate Branch panel ignored the principle cited from *Adams v Murakami* (1991) 54 Cal 3d 105, 120 in Appellants' Reply to Respondent's Opposition (at 31:6-10):

> The issue is not merely a question of trial strategy. As our former colleague Justice Peters aptly put it, "**The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits**, but a method devised by a civilized society to settle peaceably and justly disputes between litigants. The rules of the contest are not an end in themselves." (*Simon v City of San Francisco* (1947) 79 Cal.App.2d 590, 600)

7. The opinion states (1:17-18): [The property manager] "filed an unlawful detainer action against Defendants James PARKER and Michael HALLIWELL."

The integrity of court files (or lack thereof) has been a key issue in this case (documented from the first week of proceedings by Defendants and NEVER addressed by any Judge). Defendants have documented (by window clerk "C.O") the absence of Charles Jensen's Proof of Service for his initial Summons and Complaint from the Case File on June 11, 2007 (and at every inspection they were allowed during the

subsequent week) and the absence of Charles Jensen's Form UD-150 (for the same period of time). These documents later appeared as if filed on June 6, 2007 and contained false claims of a 7:45 PM June 2, 2007 personal service on James Parker, of a substitute service on Michael Halliwell at this same time (with a bogus claim that the significance of this substitute service was explained to James Parker). There was also a similarly stamped Form UD-150 (wherein Charles Jensen falsely claims to have served a copy on James Parker).

B. Preliminary (nature of case and trial issues)

8-9. The opinion states (1:18-19): "The action was based on a breach of the rental agreement – i.e., tenant James Parker subletting to Michael Halliwell in violation of the rental agreement."

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> [Defendants give] their main defense (in their Answer at CR-007): "It is clearly arbitrary discrimination in rentals to exclude someone because he knows something about his legal rights, and is willing to help a co-tenant in his legal battle. The three-day eviction notice is clearly and plainly an attempt to use retaliatory eviction to intimidate Mr. Halliwell." (CR-1136)
>
> Defendants' June 11th filing also fleshed out their anti-discrimination defense:

The State Supreme Court ruled in *Marina Point v Wolfson* (1982) 30 Cal 3d 721, 730:

Contrary to the municipal court's conclusion, the anti-discrimination provisions of the Unruh Act are not confined only to a limited category of "protected classes" but rather protect "all persons" from any arbitrary discrimination by a business establishment. (*In re Cox*, 3 Cal 3d at p. 212.) In evaluating the legality of the challenged exclusionary policy in this case, we must recognize at the outset that in California, unlike other jurisdictions, the Legislature has sharply circumscribed an apartment owner's traditional discretion to accept or reject tenants on the basis of the landlord's own likes and dislikes. (CR-016)

The same filing notes legislative ratification of this concept in 2006:

AB 1400 states that "it is the intent of the Legislature that these enumerated bases [of prohibited discrimination] shall continue to be construed as illustrative rather than restrictive." *This means that California law continues to prohibit* ***any arbitrary discrimination.*** (CR-016) (CR-1137-1138)

Defendants cite Michael Halliwell's June 19, 2007 analysis of AB 1400:

My first point on this, again, this is an analysis of AB 1400 adopted effective January

> 1st, 2006, in essence a recent amendment to the Unruh Act, and it says the act protects as amended, which basically is embracing the reasoning of *Marina v Wolfson*, which I will also quote, but this says the act protects all persons from arbitrary discrimination by business establishments, not just on the grounds enumerated in the statute. In other words, if we were able to establish that the category being discriminated against was uppity tenants, in other words, we want tenants in our building, only the docile type who don't want the rules enforced, by golly in this apartment building my word is law, and if you don't recognize that, I'm going to use my power as a landlord to kick you out. Now if the factual predicate were established for that, would, in fact, that assertion or that degree of power by a landlord constitute arbitrary discrimination within the meaning of the Unruh Act, because I think there is – it is clear that it is general arbitrary discrimination that is precluded, not discrimination against particular categories. (Transcript at 77:7-27) (CR-1163)

After Judge Nadler declined to rule in Plaintiff's favor on the issue of subtenancy (motion for summary judgment on the pleadings), Charles Jensen declined to renew his motion in proceedings before Judge Rushing, as Judge Nadler suggested he might. (Transcript at 93:10-12) Defendants' March 20, 2008 motion for reconsideration discusses the weakness of this grievance, even before Charles Jensen presented his unsuccessful motion for

summary judgment on the pleadings to Judge Nadler, and Judge Rushing's exclusion of evidence relating to it, and refusal to allow the jury to rule on the validity of the 3-Day (subtenancy) Notice:

> Charles Jensen acknowledges in his Opposition (Id. at 1) that James Parker and Michael Halliwell identified themselves as residents of 1041 Copeland Creek Drive in an April 12, 2007 conversation with him, and makes no claim of his having said anything about this arrangement being illegal. In fact, during the trial Charles Jensen acknowledged that such a characterization was inappropriate: "I apologize to the Court – the improper tenancy. And I apologize to the jury. I shouldn't use the word 'illegal'." (Transcript at 209:18-20) (Id. at 112:6-12)
>
> Judge Rushing also kept Defendants from making the 3 Day Notice to Quit (which Gus Paxinos never tried to have enforced), a line of attack in their case. "Composite Brief" discusses (in Footnote 3 at CR-1642) a key exclusionary ruling:
>
> > After a series of attempted questions and objections relating to whether Gus Paxinos would have wanted to do a credit check on any replacement for Mr. Howard and why no attempt had been made to inquire about the creditworthiness of Mr. Halliwell, the witness was asked this question about the basis for his attempting to evict him by Michael

> Halliwell: "In exercising your right to elect to allow me to stay or not to stay, did you make any inquiries whatsoever from any source whatsoever about any characteristic whatsoever of Michael Halliwell?" (Transcript at 224:6-9) Charles Jensen intervened: "Objection, Your Honor. Relevance." (Ibid. 224:10) Judge Rushing ruled: "Sustained." (Ibid:11) Michael Halliwell responded: "I'm asking him about his decision making process; this is a discrimination case, and I don't understand how it could possibly be irrelevant, [asking] how he is exercising his discretion." (Ibid. 224:12-15) Judge Rushing replied: "I'm sustaining the objection." (Ibid. 224:16) (Id. at 112:13 to 113:2)

Defendant Michael Halliwell called to the court's attention, a defect in the instructions which implied that if the landlord did indeed have the authority to enforce the written language of the agreement with respect to subletting, there was no limit in law as to how that authority may be exercised. Defendant argued that the limitations imposed by the Unruh Act (the subject matter of *Marina Point v. Wolfson*) were as applicable to the 3 Day Notice (which was the basis for a demand that Mr. Halliwell quit the premises) as to the 60 Day Notice, which demanded that James Parker vacate the property. However, Judge Elaine Rushing declined to issue any supplemental instruction on this point and the

parties returned to the hallway to await the results of further deliberation by the jury.

About two-and-a-half hours into the jury's deliberations, the parties were again summoned to deal with a question from the jury. This time the question related directly to Special Verdict Form Item #2, dealing with the legality of Mr. Halliwell's presence on the premises. Judge Rushing promulgated supplemental instructions which were satisfactory to Defendants, except for a final sentence which said "You cannot consider the parties' hidden intentions." Judge Rushing replied to Defendants' grounds for objection that this phrase was a standard part of the law of contracts. Defendant continued to object on the ground that "hidden intentions" is the heart and soul of illegal arbitrary discrimination, and that this law-of-contracts language (which was probably not applicable to discrimination cases after January 1, 2006 because of AB 1400), seemed to indicate that it was OK for the landlord to retaliate against Mr. Halliwell (when he learned that he was taking Mr. Parker's side in his resistance to eviction). Defendant urged an exact parallel to Special Form Item #3, as a supplemental instruction to mitigate the misleading effect of the "hidden intentions" language: "We the jury find that the landlord (issued or did not issue) the 3 Day Notice for a valid reason." This suggestion was rejected by Judge Rushing, who said that she would not reconsider her denial, at the first juror question conference,

> of any such addition to the items on which the jury was being asked to rule. (Id. at 113:7 to 114:4) (Defendants' Petition (S163276) seeking review re March 6, 2008 Decision at 4-5)

10. The opinion states (1:20): "The case was originally before Judge Nader."

The main activity during Judge Nadler's pre-trial proceedings in the case was Defendants' efforts to limit the court to its **proper** jurisdiction, under the sloppy (and dishonest) form of notification used by Plaintiff, whereby they should have been allowed 15 days of preparation time before the landlord could avail himself of the expedited consideration features of California's Unlawful Detainer law. If Defendants had not gone to court to challenge the sloppy and dishonest form of notification used by Plaintiff, they would have allowed only 5 days of preparation time.

Appellants' March 20, 2008 motion for reconsideration cites cases which validate their efforts to try to elicit relevant service information, before challenging the court's jurisdiction to proceed at all with the case:

> *Pease v City of San Diego* (1949) 93 Cal.App. 2d 706, 710-711 observes: "The ground stated was that the defendant city was not **properly** before the court and obviously the city did not intend thereby to appear generally." [If Defendants had been given the statutorily required 15 days preparation time required by Plaintiff's own claims with respect to the manner of service, and if Defendants had been

allowed to bring their discovery concerns to the attention of the court BEFORE the trial date was set (as the Judicial Council envisioned in structuring the handling of Form UD-150), they would have conceded that it was proper for the case to move forward BUT NOT UNTIL THEN.] Neither Defendant has sought "any relief which can only be granted upon the hypothesis that the court has jurisdiction of his person" as *Pease* requires to constitute a general appearance. [Defendants tried tenaciously to seek evaluation of their participation in the case according to the principle in] *Brock v Fouchy* (1946) 76 Cal.App.2d 363, 370 that "The rule with respect to appearance, whether general or special, may be decided when the filed documents are analyzed to determine if any affirmative relief may be granted on the merits." [Defendants also invoked the holding of] *Frohman v Bonelli* (1949) 91 Cal.App.2d 285, 291 that "an appearance made only on the hypothesis that the party is not properly before the court is a special appearance and that to hold otherwise would emasculate the statute." (Id. at 35:5-17) (Defendants' Petition (S163276) seeking review re March 6, 2008 Decision at 14-15)

11. The opinion states (1:20): [The case] "was then [on June 25, 2007] passed to Judge Rushing for trial."

During the time when all these problems with the Case File occurred, Judge Rushing was the

Supervising Judge of the Civil Division, and (unless she provided some special access to Charles Jensen) she was the only person with the clear Means, Opportunity and Motive for the file tampering which demonstrably took place. On October 17, 2007, Defendants submitted a Notice of Appeal and paid $200 to file an Appeal citing the apparent file tampering discussed above, but Judge Chouteau never allowed a hearing for this appeal. Defendants submitted (CR-993 to CR-1061) a Petition to Appellate Clerk Supervisor Donald G. Lewin Regarding the Status of the Case File (which they tried to make the focus of the October 17, 2007 Appeal, which Judge Chouteau has insisted on ignoring).

12. The opinion states (1:21): "A jury trial was held,"

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

> Although she had admitted to never having conducted an Unlawful Detainer jury trial, Judge Rushing seemed confident that she knew the proper way to handle one. Thus she said in her comments seeking to justify rushing through the Motions in Limine phase of proceedings: "In unlawful detainer actions, the time frames are much more truncated than in any other civil litigation for many reasons. The Court is bound to follow those rules." (Transcript at 447:3-6) Here is what the California Supreme Court has said about the underlying principle here in *Green v Superior Court* (1974) 10 Cal 3d 616, 636:

> The landlord contends, however, that the recognition of such a defense will completely undermine the speedy procedure contemplated for unlawful detainer actions. In the first place, however, while the state does have a significant interest in preserving a speedy repossession remedy, that interest cannot justify the exclusion of matters which are essential to a just resolution of the question of possession at issue. As the Court of Appeal observed in Abstract Investment Co. v. Hutchison (1962) 204 Cal. App.2d 242, 249. "Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the 'tail wagging the dog.'" (CR-1255)

13. The opinion states (1:21): "and the jury returned a verdict in favor of Plaintiff/Respondent"

Defendants' January 24, 2008 Appeal Transcript Appendix states (8:21-25):

> Judge Alan Hardcastle asked Plaintiff's legal team: "I have one question, Mr. Jensen and Mr. Blonski, possession is no longer an issue, is that right?" (Transcript at 8:26-27) Charles Jensen pretends that June 28, 2007 ex parte proceedings (CR-138 to CR-147) never took place (they were referred by Judge Rushing to

> Judge Hardcastle, and by him to Judge Lloyd Von Der Mehden): "That's correct. There was never an ex parte petition." (Id. at 8:28 to 9:1) Charles Jensen also suggests to Judge Hardcastle that $385 in uncollected costs from the Judgment in Jury Trial of June 27, 2007 (CR-313) have somehow been collected, saying: "It's a fully executed judgment." (Id. at 9:1) This caused Defendants to wonder what other off the record collection activity might be taking place.

14-15. The opinion states (1:21-22): [The jury's verdict was] "against Parker and Halliwell."

James Parker argued that he shouldn't pay for Plaintiff's fraudulent service.

His August 22, 2007 Fees Related Implications of Plaintiff's Subterfuges says

> Charles Jensen argues in Item #6 of his Declaration of June 14, 2007: "**That per CCP Sec 410.50 both Defendants have waived as a legal right any claim to invalid service, having made general appearances before this court.**" However, the California Supreme Court ruled in *The 1880 Corporation v Superior Court* (1962) 57 Cal. 2d 840, 843 that raising factual issues in a manner similar to Defendants' Answers "*are consistent with the character of a proceeding had upon a special appearance.*" *1880 Corporation* cites *Pease v City of San Diego* (1949) 93 Cal 2d 706, 711 which held: "*We do not consider the*

filing of the answer [setting forth petitioner's grounds for asserting a lack of jurisdiction] to set aside the default *a voluntary general appearance or a waiver* of the objection to the jurisdiction of the court." Moreover, *Pease* (93 Cal. App. 2d at 712) cites this exact parallel with the position here of Defendants Parker and Halliwell: "*The city did not demand that the action proceed to trial, or consent to the trial thereof.*" (CR-383:24 to CR-384:6)

Recent Appeal briefing debated the significance of service defects:

Charles Jensen argues that his failure to live up to rules governing the service of process didn't really matter: "Their claim that there was defect in service is completely unfounded. They chose to answer the copy of the Summons and Complaint posted with the Prejudgment Claim of Possession thereby relieving plaintiff of any further requirement of service and of course waiving any alleged defect in service." (Reply Brief at 11)

Parsons v Superior Court of Marin County (2007) 149 Cal.App.4th Supp. 1, 6 notes this basic principle: **"Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer."** (1 Cal. Eviction Defense Manual (Cont. Ed. Bar 2d ed. 1993) Sec 6.5 p. 104 (rev. 4/05.) *Parsons* also notes that **rules for a party's challenging the sufficiency of service**

> **should not be applied so as to construe this as a general appearance, because this "moots the very point he is seeking to raise."** (*Delta Imports, Inc. v Municipal Court* (1983) 146 Cal. App. 3d 1033, 1036.) (CR-1483:11 to CR-1484:3)

16. The opinion states (1:23-24): "This is an appeal from the unlawful detainer judgment entered against Appellants/ Defendants James Parker and Michael Halliwell."

After Judge Rushing granted a motion by Defendant Michael Halliwell for a continuance of the July 31, 2007 date she had set for a hearing on the fees motion (because of problems of mail notification to Defendants of the hearing date), Defendants tried unsuccessfully to secure from Plaintiff's attorney the endorsed filed copy (of their original "unfiled" fees motion or any revision in response to Defendants' July 16, 2007 submission) they had been promised by Kadin Blonski. However, when Defendants invoked Local Rule 18.8 (on August 15, 2007 with an e-mail entitled "where's your brief?"), Kadin Blonski responded by insisting that no filing with a proper face sheet was necessary. On August 22, 2008 James Parker sent a 52-page opposition (CR-374 to CR-425) to an award of ANY fees to Plaintiff's counsel, which evoked his refusal to accept any further electronic service (on the ground that "paper is not cheap.") For the next several weeks after James Parker filed his 52-page Opposition, whose length is acknowledged (CR-457) in an e-mail from Kadin Blonksi, Charles Jensen and Judge Rushing

apparently agreed to pretend that James Parker's Opposition did not exist.

C. Appeal (issues appealed and filings)

17. The opinion states (1:25-26): "The record on appeal consists of those items specified in CRC 8.754 et seq. and a transcript from a June 19, 2007 hearing before Judge Nadler"

There is no indication that the Appellate Branch Panel actually inspected any hearing transcripts; they never quote anything and seem content to accept characterizations about such matters made by Plaintiff. It is clear that they only glanced at the cover of the transcript referenced above, or they would have noticed that pages 85 through 94 deal with the crucial **June 21, 2007** proceedings before Judge Nadler, where he decided to grant a jury trial and transfer the case to Judge Rushing.

18. The opinion states (1:26-27): [The record on appeal includes] "transcripts from the June 25/June 26 trial."

Defendants' January 24, 2008 Appeal Transcript Appendix states (3:2-12):

> Michael Halliwell turned to issues related to transcripts of June 19, 21, 25 and 26, 2007 proceedings – which were available when the November 5, 2007 briefing order for the January 24, 2008 hearing was issued: "I would like the Court to consider that you should not be deciding today's matters relating to the

> September 25th transcript. And it may very well be that you would like to consolidate it with the appeals slated for June, which would be – you know, at least would be consistent with allowing proper briefing. But there's been no time for briefing based on this fees-related aspect, so I just wanted to make it clear to the Court that I'm hoping that you will confine your consideration today to the validity of the trial (which concluded on June 26, 2007)." (Id. at 4:12-21) Judge Chouteau responded: "I think you made that point clear." (Id. at 4:22)
>
> In spite of this seeming commitment, the Appellant Branch "reached out" to decide matters NOT briefed because of problems relating to unavailability of key transcripts and the condition of the case file.

19. The opinion states (1:27): "There is some confusion as to the nature of all the appeals."

> Appellants note (May 5, 2008 Supreme Court Appendix A at 1:13-17):
>
> Notwithstanding the absence of key transcripts related to the handling of the attorney's fees issue, the Appellate Branch "reached out" in their briefing order of November 5, 2007 (CR-1109) to consolidate three later appeals for hearing on January 24, 2008 along with Defendants' July 24, 2007 (jury trial) appeal. Under the provisions of this Order, Appellants' Opening Brief was due

> November 26, 2007; Respondent's Opposition Brief was due December 17, 2007; and Appellants' Reply brief was due December 27, 2007. Judge Rushing did not authorize release of transcribed Reporter's Notes on her handling of the attorney's fees issue until January 11, 2008 and they were not provided to Defendants until January 14, 2008. (See Chronological Index at 3004).

20. The opinion states (1:27): [There is some confusion as to] "who has filed the appeals."

Ehret v. Ichioka (1967) 247 Cal.App.2d 637, 640-641 explicitly affirms that it does not matter which of a group of self-represented litigants signs an appeal, so long as it is clear whether the non-signer(s) support the position being taken by their side. Notices of Appeal MUST be liberally interpreted in favor of their sufficiency. CRC 8.750(a).

21. The opinion states (1:27 to 2:1): "This reviewing Court is treating this as an appeal by both defendants from the judgment"

Judge Rushing's June 26, 2007 Courtroom Minutes discuss court findings:

> "Mr. HALLIWELL requests Defendants be allowed to enter Plaintiff's complaint into evidence. Court DENIES Defendant's request (explaining complaints are not by the rules of evidence permitted in evidence)." (CR-324:4-5) Judge Rushing referred to a Notice of Hearing, slated to take place on March 26,

2007, as noted by Plaintiff's March 30, 2007 Complaint, which said (CR-039): "PER THE ATTACHED, THIS TERMINATION IS FOR CAUSE." The attachment (CR-040) said "VIOLATION REPORTED: Ongoing threatening behavior of your tenant towards other residents." Judge Rushing turned to Charles Jensen and said: "I notice that in your notice, you listed cause." (Transcript at 172:25) Charles Jensen responded: "*That is correct, Your Honor.*" (Ibid. at 172:26) Judge Rushing asked: "It that the theory you're proceeding on?" (Ibid. at 172:27-28) Charles Jensen answered: "*It is not, Your Honor, simply because the code section says no cause is needed.*" (Transcript Ibid. at 173:1-2) Judge Rushing responded: "Right." (Ibid. at 173:3) Defendants tried to point out the evasiveness involved in withholding the hearing results which Plaintiff had in hand when he filed his complaint, and in pulling back from trying to establish the validity of the cause listed in their complaint. Judge Rushing ruled out such a line of questioning based on Plaintiff's complaint, which Defendants tried to introduce into evidence. Judge Rushing said, "Well, complaints aren't entered into evidence." (Transcript at 211:6-7) Michael Halliwell protested: "Well, but he signed it." (Ibid. at 211:8) Judge Rushing insisted: "Sir, I have just made a ruling." (Ibid. at 211:9) (CR-040)

22. The opinion states (2:1-2): [Contrary to established policy requiring supporting transcripts, the

Appeal Court treated this appeal as] "from any post-judgment orders."

Judge Rushing issued an August 28, 2007 default judgment awarding $10,000 to Charles Jensen, which he tried to implement (CR-515) using personal service on Judge Rushing's Judicial Assistant and much delayed mail service on Defendants, on the basis that "Defendant JAMES PARKER did not oppose the motion." As window clerk, Dave Sharp will attest, an entire volume of the case record "went missing" from late August 2007 to early September 2007, which included all fees related submissions by both sides).

Defendants' January 24, 2008 Appeal Transcript Appendix states (2:16-19):

> At the January 24, 2008 Appeal Hearing problems relating to documenting these events were discussed. Michael Halliwell continued his dialogue with Judge Chouteau: "There is a second matter that I submitted to Judge Boyd relating to the late availability of the transcripts that we relate to the fees aspect that was consolidated with this. The transcripts came in so late that I'm asking for separate consideration of the matters that related to the transcript of September 25th, which became available to us on January 15th." (Transcript at 3:7-13) Judge Chouteau replied: "This is a different issue which is on our June calendar." (Id. at 3:15-16)

23-26. The opinion states (2:4): "Appellants' arguments are not a model of clarity, and are spread out in the 100+ pages of material filed by Appellants. Appellants' briefs are rambling and disjointed."

None of the Appellate Branch judges asked about ANY aspect of our case.

Defendants' January 24, 2008 Appeal Transcript Appendix states (7:2-15):

> At the January 24, 2008 Appeal Hearing, Charles Jensen declined to discuss any aspect of the case. He DID NOT offer any explanation for the wholesale abandonment of Due Process in the handling of the attorneys fees issue, but he DID ask for permission to seek still more attorneys fees, in this request WHICH AS OF MAY 27, 2008 HAS NOT BEEN GRANTED: "I would reiterate that should the Paxinos family prevail today, that we would be specifically asking for this Court, as required under civil matters where there is an attorneys' fees clause under 1717, that were we to prevail, His Honor would find us the prevailing party and allow us leave to file a notice for attorneys' fees." (Transcript at 8:15-20)
>
> Later, Charles Jensen would find a way to proceed without the leave to file a notice for attorney's fees which he requested. Charles Jensen's flouting of the rules and the willingness of the Sonoma County Superior Court to "look the other way" as he did so, had become

such a serious problem that Defendants cited (at CR-762:25 to CR-763:2) this fundamental principle from *Adams v Murakami* (1991) 54 Cal·3d 105, 120 in their September 17, 2007 Memorandum of In Pro Per Litigants' rights:

> The trial of a law suit is not a game where the spoils of victory go to the clever and technical regardless of the merits, but a method devised by civilized society to settle peaceably and justly disputes between litigants.

Defendants' January 24, 2008 Appeal Transcript Appendix states (7:17-25):

> In contrast to Judge Rushing's rationale for awarding attorneys fees to Charles Jensen (her retroactively invalidating the filings on this subject by Defendant Michael Halliwell), Judge Chouteau followed this established practice of simply asking James Parker if he wished to embrace the arguments made by his co-Defendant. Judge Chouteau asked: "Let me just say, Mr. Parker, did Mr. Halliwell speak for you?" (Transcript at 8:22-23) James Parker answered: "He did." (Id at 8:24)
>
> Yet Judge Chouteau and his colleagues, Judges Kenneth Gnoss and Allan Hardcastle, would later end up supporting Judge Rushing's decision to rule in Charles Jensen's favor on key matters simply because James Parker failed to sign briefs submitted in behalf of both Defendants by Michael Halliwell (even

though James Parker affirmed in open court that Michael Halliwell did indeed speak for both Defendants in these instances).

Defendants' January 24, 2008 Appeal Transcript Appendix states (2:9-15):

> At the January 24, 2008 Appeal Hearing Presiding, Judge Chouteau clarified the scope of his ruling. Michael Halliwell observed: "If the Court doesn't feel, itself, would be aided by further filings, of course, it can decline to consider them. But it is a very complicated case, especially if you're operating from the original papers. I think we're within the page limitations, but only by counting 15 pages for each of us, and also, only by relegating things to appendices. And the major thrust from the other side was [that we're] way over the page limitations – and without considering specifically which page limitation – " (Transcript at 5:4-12) Judge Chouteau intervened: "I don't think you need to argue that aspect of – " (Ibid. at 5:13-14) Michael Halliwell responded: "I don't need to worry about things being discarded because of page limitation?" (Ibid. at 5:15-16) Judge Chouteau replied: "We have not taken any such action." (Ibid. at 5:17) Michael Halliwell expressed his relief: "Thank you. All right." (Ibid. at 5:18)
>
> Once all the briefing was in, Defendants organized and condensed (by eliminating duplicative quotations), the contentions of both sides into a single brief with 30

> categories that was only 8 pages longer than the normal aggregate length of filings, where there is only one litigant on each side (and a 16 footnote Appendix with supporting documentation). This composite filing was made available two weeks before the January 24, 2008 hearing date, but Judge Chouteau's Court rejected it.

27. The opinion states (2:6): "However, it appears the following claims of error have been made:"

What is "rambling" or "disjointed" about this categorization of the 30 claims slated for consideration on January 24, 2008:

> A. Trial Date Setting: 1. Statewide standards for trial date setting versus Sonoma County procedures; 2. Appellants' efforts to secure their right to an impartial setting of the trial date; 3. Rectifying improper local application of binding statewide procedures
>
> B. Charles Jensen's Misrepresentations re Service of Summons: 1. Actual circumstances of service of summons on Defendants; 2. Charles Jensen's claim that the challenge to service was a general appearance; 3. Appropriate handling of cases where adequacy of service is challenged
>
> C. Defendants' Efforts to Counteract Charles Jensen's Evasions of Discovery: 1. Dispute over whether Defendants really tried to secure withheld information; 2. Authorities

supporting flexibility in the application of discovery deadlines; 3. Defendants had to choose between their jurisdictional challenge and discovery

D. Judge Rushing Disallows a Continuance or a Reopening of Discovery: 1. Sonoma County bias against tenants extends to deprivation of discovery; 2. Authoritative support for reopening discovery because of new trial date; 3. Alleged procedural mistakes by Defendants and their supporting authorities

E. Judge Rushing Denies Our Motion to Exclude an Anonymous Hearsay Report: 1. Appellants tried to preclude Exhibit #5 in their evidentiary sanction motion; 2. Judge Rushing gives short shrift to Defendants' written motion to exclude; 3. There was absolutely no basis for allowing Exhibit #5 into evidence; 4. Judge Rushing unfairly circumscribed Defendants' scrutiny of Exhibit #5; 5. Our ability to effectively oppose hearsay was overloaded by document dump; 6. Even much more reliable forms of hearsay don't meet admissibility standard; 7. Judge Rushing completely disregarded the unreliability of Exhibit #5

F. Judge Rushing Disallows Presentation of our Unruh Act Discrimination Claim: 1. Unruh Act goes beyond protecting classes, bars ANY arbitrary discrimination; 2. Judge Rushing bars consideration of "hidden intentions" re subtenancy issue; 3. Judge

Rushing cripples retaliation defense by excluding "too recent" evidence; 4. Judge Rushing unfairly limits Appellants' case in her rulings on objections; 5. Judge Rushing curtailed both evidentiary and legal arguments by Defendants

G. Judge Rushing Unfairly Circumscribes Defendants' Input on Jury Instructions: 1. Jury instructions must fairly embody claims which BOTH sides seek to assert; 2. Faulty jury instructions were flawed enough to constitute a reversible error; 3. Judge Rushing's reason for adopting her "Jensen-only" jury instructions

H. Judge Rushing Blocks Key Retaliatory Evidence by Narrowing Civil Code Sec 1942.5: 1. Judge Rushing vitiates her own Civil Code Sec 1942.5 jury instructions; 2. Judge Rushing excluded ALL of Defendants' proposed jury instructions; 3. Judge Rushing DID NOT adhere to statute-based jury instructions

Nearly all of the 120 cases, statutes and rules cited in the Composite Table of Authorities are contributed by Appellants (with substantial quotations); presumably this part of the Composite Contents comes close enough to being "a model of clarity" to satisfy the reviewing court.

D. Claims of Error (8 trial-related, 2 re fees)

28. The opinion summarizes Appellants' claim (2:7): "1) There were errors in setting the trial date;"

The Sonoma County Superior Court's failure to follow trial date setting standards on the official website (www.court-info.ca.gov), let Charles Jensen perpetrate a fraud on Defendants, which deprived them of any opportunity for discovery. (See **1. Trial Date Setting Process Contrary to Publicized State Standards** at 2-5 of California Supreme Court Appendix C)

Section 1 of Appendix C discusses the efforts of the Judicial Council to make the process of adjudication in Unlawful Detainer actions "user friendly" for the 90% of tenants in such cases who are self-represented, including a procedure allowing five days after the landlord makes his request to set a trial date, for the tenant to make a counter request (to allow time for discovery, including use of the Judicial Council's specially prepared UD-106 Form Interrogatories). We cite *Adams v Murakami* (1991) 54 Cal 3d 105, 120 "The trial of a lawsuit is not a game where the spoils of victory go to the clever and technical regardless of the merits," and show how Charles Jensen violated this mandate, by not following the process set forth on Form UD-150.

Recent Appeal briefing focuses on how the Sonoma County process operates:

> Charles Jensen asserts: "Counsel for Respondent filed his request for trial at the window and was given (he did not request a specific date) the first possible trial date. This is how the Sonoma County Superior Court conducts this process. If a "counter at-issue: is filed the

> Court can/has changed the date for trial if that is what is called for." (Reply Brief at 3) Charles Jensen knows why this process prejudices defendants in unlawful detainer actions. On June 25, 2007 he said to Judge Rushing: "Your Honor, discovery in an unlawful detainer is based on the date **first** set for trial. That is the language of the code section." (Transcript at 162:13-15, emphasis added.)
>
> Defendants were surprised by their notice of the June 19th trial date, since they had not (and never did) received a copy of Plaintiff's Form UD-150, and when they went to Room 107J on June 11th there was no (bright blue) Form UD-150 in the Case File either (see listing of Filings by Plaintiff as of June 11th at 10:00 AM (CR-025) verified by window clerk "C.O." (at CR-031). Defendants' June 11, 2007 Memorandum Relating to Trial Date Setting complains: "**Form UD-150 was never provided to Defendants**, so the clock never started running for a Counter-Request, creating many serious problems." (CR-022) (CR-1478:3 to CR-1479:3)

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Michael Halliwell responds to Judge Nadler's asking about the trial-setting notice:
>
> Yes, I did [receive it], but I never got this document providing the information he says

he sent to us. The point being that had he actually sent a document -- first of all, I am perplexed. There is one thing that's quite clear, we answered on the 4th, he got our answer on the 5th, he went to the court and in one way or another got a decision setting a trial date on the 6th. That's in the record, it is undisputed. Those are the timeline [facts]. Now how in the world can the Court expect even if he had sent the document to us as he claimed, he would know that such document wasn't in the file on the 11th when I looked for it and I, in fact, filed a document with this Court noting the absence of this document, but even if it had been mailed to me, it would not have reached me in time for me to do anything about it because the Court simply didn't wait for any input from the other side.

It was patently obvious that if the Defendant answers on the 4th, the Plaintiff shows up on the 5th, and you set a trial date on the 6th, you don't really care what the other side has to say. It is obvious on the face of it. It looks to me like you let him just climb aboard [as] on a Law and Motion matter, like you ordinarily aren't able to do, you just take the word of the attorney what trial date he wanted and you gave it to him. (Transcript at 15:19-16:14)

Judge Nadler warned Defendant for questioning the Court's trial setting process:

We need to have an understanding with each other, Mr. Halliwell, you are now bordering in

an area with your argument that I find to be disrespectful to this Court, and I'm going to warn you right now, sir, whether you are a lawyer or you are not, you are going to show this Court respect. By making accusations to the Court such as accusations of unfairness or something along those lines, sir, that is bordering on contempt of court. So I'm going to admonish you right now, you need to hear this very clearly, I will not sit here and I will not listen to those sorts of arguments. If you continue to make arguments like that, then I will find you in contempt of court. If I do that, sir, you are going to be facing the possibility of fines and/or jail time for each instance of contempt, okay? (Transcript at 16:15-17:1)

Michael Halliwell responds to Judge Nadler's threat of a contempt of court fine:

I hear, you, Your Honor, I didn't mean to indicate any contempt or lack of respect for any aspect of what I have described. I did try to indicate that it is physically impossible if, in fact, the timeline in the court record is, in fact, accurate, we answer on the 4th, he comes in on the 5th, the trial date is set on the 6th, we've got a stamped document that says the trial date, in fact, was set on the 6th. And all I said was that procedure on its face is manifestly unfair and contradictory to the spirit of Form [U.D.]150 because you have not even allowed time for the document to reach the opposing party via the mail if it, in fact, had been served that way before you made the decision

on the trial date. (Transcript at 17:2-15) (CR-1142-1143)

29. The opinion summarizes Appellants' claim (2:7-8): "(2) there were defects regarding service of the summons/ complaint;"

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> In support of his unnoticed motion for a summary judgment on the pleadings, Charles Jensen cited Michael Halliwell's Affidavit of June 17, 2007 (Transcript at 19:6-9) and the Court's acceptance of this incorporation by reference, caused Defendants to assume that the entire June 17th Affidavit was properly before the Court, including this crucial language:
>
> (1) **Proof of Service is an absolute requirement for establishing a court's jurisdiction.** There are various ways that a litigant may lose his or her right to challenge a court's jurisdiction based on failure to allege that the mode of service of the opening complaint described in the Proof of Service was legally adequate, but the **absence** of this essential clarification deprives the opposing party of knowledge of how service is claimed to have been performed, and hence any ability to know whether it was adequate or not. Usually Court Clerks exert due diligence in this matter and it is impossible to initiate any action without a Proof of Service. A *pro se*

litigant is entitled to assume that the Court is taking reason-able care with respect to whether it actually had jurisdiction, and should not lose any remedies he might have had if he had not assumed that a Proof of Service was "somewhere in the pipeline." POS-10 is clearly stated as the required form of Proof of Service on the Summons itself, its absence (and the absence of any other document describing under oath the person who allegedly made service and the mode of this service) was documented by Defendants in their filing of June 11, 2007. Any actions taken in this case so far are null and void, and Plaintiff's [attorney] must either provide a POS-10 and start over from the initial filing, or actually perform proper service of the Summons and Complaint if there is no one willing to say under oath that it has already taken place.

(2) The date by statute fixed for the initial appearance of a defendant in an Unlawful Detainer [action] depends on the method of service. If service purports to have been performed in a manner that requires an Answer within five days, but actually has been performed in a manner that requires an Answer within fifteen days, **a Defendant should not be punished for giving Plaintiff extra time to know the nature of the opposition and prosecute his case more knowledgeably.** Accordingly, the 20 day entitlement to a trial date established by CCP Sec 1170.5(a) was ten days later than it was

> purported to be when the June 19, 2007 trial date was granted. (CR-073:11-25) (CR-1133-1134)

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Defendants hoped that they would have an opportunity within the trial date setting process established by the California Judicial Council – and called to their attention by the Summons itself (CR-004) by a reference to "information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/self-help)" – to secure action on their challenge to the adequacy of service before having to deal with other aspects of the case. However, Defendants were forced by Charles Jensen's bypassing of the Judicial Council's trial-date setting process to pursue a defense on two fronts. At their earliest opportunity (on June 11, 2007) to file after learning of Charles Jensen's setting of a trial date with no input from the opposing party, Defendants continued on the "special appearance" front (a procedure to make it possible to enforce service requirements without requiring a party to give up any of his or her other procedural rights) by arguing: "As noted in our Answer filed June 4, 2007, neither defendant was properly served in this action. There was no personal service, and 'Posting or Mailing' requirements have not been met." (CR-013) (CR-1137)

30. The opinion summarizes Appellants' claim (2:8):

"(3) Plaintiff's evaded discovery;"

Defendants' page-by-page requests to clarify June 11, 2007 Case File notes:

> The date "30 Mar 07" on the previous page may be significant, because the attachment sets a Meadow Pines Homeowners Association hearing date and time of "Monday, March 26, 2007 at 6:30 pm." There is a presumption in law that evidence in the possession of a party would be divulged if that evidence was helpful to his or her case. The results (if indeed the hearing took place as scheduled) are unknown to Defendants, in spite of their efforts to secure this information from the Meadow Pines Homeowners Association. This page is a February 20, 2007 NOTICE OF HEARING, not any sort of finding. The VIOLATION REPORTED is "Ongoing threatening behavior of your tenant toward other residents." Defendants have tried without success to learn the name of the person who made this report or the nature of the conduct alleged by this anonymous person. Whoever the complainant turns out to be, the nature of the complaint is the pivotal factor in Plaintiff's case. The posture of total stonewalling by Plaintiff in this case, again supports the legal presumption that evidence on this point is not favorable to Plaintiff. (CR-029)
>
> Charles Jensen concealed a report on a March 26, 2007 Homeowners' Association meeting which James Parker was not allowed to

> attend, and violated discovery guidelines by severing communications to prevent Defendants from initiating procedures necessary to secure this information. [When Defendants used ex parte applications to try to secure an opportunity for discovery, Plaintiff's counsel violated Local Rule 5.7D by refusing to "meet and confer" to clarify this situation.] Jensen also sidetracked Defendants' efforts to use Form Interrogatories 71.7 and 77.1 to find out about alleged "ongoing threatening behavior of your tenant toward other residents" and falsified and circumvented the process mandated by Form UD-150 for trial date setting.

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Judge Nadler asks James Parker if he wants to comment; he responds:
>
> No, not at this time – I'm trying to follow along with the arguments, other than to affirm along with him that we never received any memorandum in the mail or in person or in any way, shape or form. All we received is a document with an already set trial date on it. (Transcript at 10:26 to 11:5) (CR-1138)
>
> James Parker also complained, "I had been trying for six months to try to find out what the issue is without any success." (Transcript at 11:20-22) Since Plaintiff's documents relating to his request for a court trial were

> missing from the case file, Defendants protested the tactics of Plaintiff's attorneys in their June 11, 2007 Request for Jury Trial: **In the most literal sense of this expression, they are "trying to pull a fast one."** It is difficult to imagine how this case can be fairly adjudicated, unless Plaintiff is forced to divulge the facts on which he relied in making his decision to evict. The sort of "Star Chamber" proceedings apparently utilized by the Meadow Pines Homeowners Association, wherein the complaint was anonymous, its contents confidential and Mr. Parker had no right to confront his accuser, nor to offer any sort of defense, nor to learn what in fact transpired in these proceedings, if any action was indeed taken (pursuant to the notice appended to Plaintiff's complaint alleging "threatening behavior"); cannot be allowed to stand as a basis for eviction. (CR-021) (CR-1138-1139)

Charles Jensen's refusal to confer is the linch-pin of his evasive tactics.

> One might wonder why Defendants would have any desire to "meet and confer" with anyone as abusive as Charles Jensen, but his abusiveness has a purpose. In Defendants' Motion for Reconsideration (at 66:15-24), which Charles Jensen treats so disdainfully, Defendants note how Charles Jensen successfully employed his abusive style to sidetrack Michael Halliwell's effort to have Judge Rushing explain her ruling on Exhibit #5

(allowing into evidence an anonymous compilation of hearsay complaints). He starts by denouncing Dr. Halliwell (who has taught university courses about legal protection of political rights) as "*somebody who is uneducated, doesn't know what he is doing, and doesn't choose to follow the law.*" (Transcript at 444:10-12) After praising Judge Rushing, Charles Jensen continues: "*The Evidence Code sets forth what your parameters are. You haven't violated any of them. But what is a continuing violation here of even the most basic preliminary discovery is completely steamrollered by somebody who can't read.*" (Transcript at 444:15-19) After bypassing the vital role of consultation noted in *Townsend v Superior Court* (1998) 61 Cal.App.4th 1431, 1434-1435 and cases cited therein, Charles Jensen continues his denunciation of Dr. Halliwell: "*He chose not to. And now, like the two boys in Southern California, Menendez, having blown their parents apart at short range with a shotgun, now they come in sentencing and they say, give us consideration for now we are orphans. He's got just about as much validity. They don't even read the code section. If they did, perhaps the words are too big and they don't understand it.*" (Transcript at 444:24 to 445:2) Charles Jensen then tries to proclaim the legitimacy of his successful campaign to vitiate *Greyhound Corp v Superior Court* (1961) 56 Cal 2d 355, 376 ("**One of the principle purposes of discovery was to do away 'with the sporting theory of litigation – namely,**

> **surprise at trial.'"**) Next, Charles Jensen invents out of whole cloth sidebars in Judge Nadler's pretrial proceedings [who dealt with all ex parte applications without seeing either side] which supposedly dealt with three ex parte applications: "*Things that went on at sidebar, because Judge Nadler having seen three ex partes with absolutely no bases whatsoever, first year student, the school that you graduated from, pulled a stunt like that, any one of the professors would have given him a quarter and said call your mama, you're not going to make it as an attorney. And yet he indulged because he's far brighter than I am and far more patient than I am right now.*" (Transcript at 445:9-16) Even if it were true that a self represented litigant were to overlook one or more of the technical aspects of the discovery process, this does not make denial of any discovery appropriate. (California Supreme Court Appendix E at 6)

31. The opinion summarizes Appellants' claim (2:8-9): "(4) the trial court erred in denying Defendants' motion to continue case to reopen discovery;

July 26, 2007 Respondent pretends Int. 71.7 & 77.1 were not promulgated

> On **July 26, 2007** Charles Jensen asserted that "counsel was under no obligation to educate the defendants in counsel's tactics at trial." In fact, *Greyhound Corp. v Superior Court* (1961) 56 Cal 2d 355, 376 and *Chronicle Pub. Co. v Superior Court* (1960) 54 Cal 2d

548, 561 proclaim that legislatively mandated legal procedures are intended to do away "with the sporting theory of litigation – namely, surprise at the trial." Moreover, it was Charles Jensen's false claims with respect to service which allowed him manipulate the time line to avoid providing the answers required in Form Interrogatories 71.7 & 77.1 (which were invoked in substance in Defendant's filing of June 17, 2007 and formally presented on June 21, 2007). (5/27/08 Notice of Appeal at 54:3-11)

July 27, 2007 Protest re fabricated claim of "June 2, 2007 personal service"

Charles Jensen has tiptoed around embarrassing facts related to his false claims of service which are set forth in Defendant's Affidavit of **July 27, 2007**, which show that he cannot have testified truthfully in the affirmations on this subject he made in his June 14, 2007 Declaration. This includes **a)** the fact that James Parker was not alone on June 2, 2007 at 7:45 PM when a "personal service" was alleged to have taken place, **b)** the fact that the nearest approach to the alleged June 2, 2007 personal service was a mailing of papers which was postmarked June 4, 2007, **c)** the fact that Plaintiff was notified in a letter of June 11, 2007 that the failure of his attempts at service to that point failed to satisfy the requirements of CCP sec 415.45 (a) & (b), and **d)** the fact that a flagrantly inadequate tossing of the summons and complaint over

> our fence on June 1, 2007 (that was described as having been delivered otherwise in these same papers) forced Defendants' to respond in their Answers of June 4, 2007. Defendants' reply brief quotes the language in their forced Answers which challenged the clear inadequacy of service and notes: "When an Answer squarely challenges the adequacy of service in such a manner it qualifies as a 'Special Appearance' and thus DOES NOT WAIVE THE CHALLENGE TO THE SERVICE IT SEEKS TO CALL TO THE COURT'S ATTENTION." (5/27/08 Notice of Appeal at 28:7-25)

Defendants' January 24, 2008 Appeal Transcript Appendix cites caselaw:

> Defendant/Appellants' Reply Brief (at CR-1489:20-23) cited *Hernandez v Superior Court* (2004) 115 Cal.App.4th 1242, 1246 in support of the importance of the discovery issue at stake here: "Accordingly, decisions about whether to grant a continuance or extend discovery, 'must be made in an atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency.' (*Bahl v Bank of America* (2001) 89 Cal.App.4th 389, 398.)" (Id. at 4:23 to 5:3)

Our January 24, 2008 Appeal Transcript Appendix continues (5:21 to 6:4):

> At the January 24, 2008 Appeal Hearing Defendant Michael Halliwell continued his summary of pivotal issues which could dispose of the case: "And the third basic concept is that because we are denied discovery, and I believe this was a deliberate tactic, when they filed their complaint, they did not put in this key report, March 28th 2007, from the Homeowners Association. They did not put that as part of their complaint. They, instead, put a notice of hearing attached to their complaint. We tried to get, in vain, everything we could possibly get a hold of, to get a hold of that document. We were simply not allowed to do so. We had no discovery.
>
> We had no opportunity to have the pretrial motions we might have had, had the case stayed with Judge Nadler, who had made arrangements to do that sort of thing. Because it went to a different judge, Judge Rushing said that's all over. Again, it's too late for discovery here. In fact, she said, I never keep a jury waiting. I'm not going to rule on your motion until there's a break. There never was a break.

32. The opinion summarizes Appellants' claim (2:9-10): "(5) the trial court erred in denying defendants' motion to exclude 'Exhibit 5';"

Defendants knew from their one and only (April 12, 2007) telephone conversation with Charles Jensen, that his main reason for severing communications was to avoid discussing Plaintiff's reasons for

eviction. After an unsuccessful two-month struggle to try to obtain the March 26, 2008 Report of the Homeowner's Association (alluded to but not provided in the 60-Day Termination Notice), Defendants suspected that Charles Jensen would try to sneak this Report in when it was too late for Defendants to effectively challenge its credibility. Therefore, Defendants tried to block introduction of what became Exhibit #5 in an off-the-record sidebar, and followed up at their first opportunity with a written motion to exclude the March 26 Report.

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

> Defendants' rejected "Motion to Strike No-Notice Anonymous Evidence (Redacted Hearing Results)" provided (CR-835):
>
> 1. Anonymous evidence is precluded by the Sixth Amendment, and this is an element of Due Process in other contexts as well, binding on States via the Fourteenth Amendment.
>
> 2. Evidence withheld until the last minute, then disclosed too late in the trial process for any possibility of rebuttal evidence being gathered, is prejudicial and has no reliable probative value.
>
> 3. Defendants repeatedly requested this very piece of evidence, i.e. the results of the March 26, 2007 hearing, on several occasions after the February 20, 2007 Hearing Notice was attached to Plaintiff's complaint, and Mr.

> Charles Jensen adamantly refused to supply it.
>
> Accordingly, for both evidentiary and procedural reasons, Plaintiff's Exhibit dated March 28, 2007 (containing Meadow Pines Homeowners Association Hearing Results) is hereby stricken from the Record. (CR-1240-1241)

Defendants' December 7, 2007 Transcript Excerpts discuss Exhibit #5:

> Michael Halliwell started to go over "this surprise document" (the March 28th Hearing Report): "Number one, that's crossed out; isn't it?" (Transcript at 351:2-6) James Parker answered: "Yes. The name is crossed out." (Ibid. at 351:7) Michael Halliwell added: "And no matter how you hold it up to the light, you can't really figure out who that is?" (Ibid. at 351:8-9) James Parker answered: "Who the person is? No." (Ibid. at 351:10) Michael Halliwell continued: "So an anonymous person has made a charge. This person is anonymous?" (Ibid. at 351:11-12) James Parker answered: "That's what it appears to be, yes." (Ibid. at 351:13) When Michael Halliwell tried to lay a foundation for asking James Parker how he felt about being accused on the basis of such unreliable evidence, Charles Jensen objected, saying: "This is going to ask for a legal conclusion." (Ibid. at 351:16-17) Judge Rushing ruled: "It is irrelevant." (Ibid. at 351:18) (CR-1416)

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

> Judge Rushing [as part of document dump which Defendant described at the time: "They just dumped a pack of letters, undifferentiated, saying here's 24 letters, plop." (Transcript at 242:27-28)] admitted a report filled with third-hand hearsay complaints made by unspecified persons, compiled into a report by an anonymous person, and put into evidence as a result of it being conveyed by a third person (not available for cross examination) who wrote on the bottom of the anonymous report "This was submitted by a neighbor." (Exhibit 5, filed by Defendants after trial at CR-144). However, when Michael Halliwell asked James Parker (Transcript at 299:21 to 300:6) about a communication to him by "Chris and Christine, the people who lived next door to me" he was not allowed to answer this question: "Did either of these people ever communicate with you that they received any satisfaction on this basic grievance?" Charles Jensen interrupted at this point, saying: "Objection, Your Honor. Any response will be hearsay." Judge Rushing responded. "Sustained." (CR-1239)

33. The opinion summarizes Appellants' claim (2:10): "(6) the trial court erred in failing to instruct the jury on the 'Unruh Act';"

Defendants' Transcript Excerpts note the scope of *Marina Point v Wolfson*:

Within the governing precedent, I think *Marina Point v Wolfson* is still good law, having been affirmed by the state Legislature, explicitly in the course of this amendment I'm citing, it says in *Marina v Wolfson* in negating the exclusionary policy in this case, you must recognize at the outset that California, unlike many other jurisdictions, the Legislature has sharply circumscribed an apartment or [homeowner's] discretion to accept and reject tenants on the basis of the landlord's own likes and dislikes. This is directly out of the governing precedent recently affirmed explicitly by the Unruh Act [amendment] by the Legislature. So I believe I can stand very strong on the idea that *Marina Point v Wolfson* is still good law, the question would be how Your Honor interpreted that precedent. I don't think it's been overruled.

But I have more. And that is this, the argument that the landlord is basically saying, and I've heard repeated in one way or another in Mr. Jensen's refusals to talk about any other aspect of the case, that is this, the landlord doesn't need to have a reason, he can discriminate, not against certain protected classes, but he can discriminate. If you are being discriminated against in an arbitrary fashion but you are outside of a protected class, too bad. That's what I think is the gravamen of what they are saying. This is very similar to an argument asserted by Proposition 14 in 1964 which had the full force

> of state law behind it because it was a constitutional amendment adopted by two-thirds of the people, which, of course, constitutional amendments sweep away everything in their path as far as state law is concerned. Nevertheless, there is one last line of defense, and that is the Due Process Clause of the 14th Amendment, because the Federal Constitution is supreme, and if it can be shown that the discrimination in this case violates the Federal Constitution, the Due Process Clause thereof, then we are okay, even if we are not within the safe harbor of the Unruh Act itself. (Transcript at 78:8-79:17)

Michael Halliwell continues to discuss applications of the 14th Amendment:

> Now the scope of the Due Process Clause of the 14th Amendment was authoritatively interpreted by the California Supreme Court in *Mulkey v Reitman* in 1966. This was a previously pled case, that's why I wanted to show you exactly where it is, but in this decision, there was a head-on collision between Proposition 14, the full and complete expression of state authority intended to repeal the Rumford Fair Housing Act and the Unruh Act, which were both on the books at the time, and when the dust cleared the Unruh Act and the Rumford Fair Housing Act were left standing, and Proposition 14, if you will, lay dead on the battlefield. Because the Supreme Court of California ruled in *Mulkey v Reitman* it is now beyond dispute that the 14th Amendment

> protects the rights to acquire, enjoy and own property, equality and enjoyment of property rights was regarded by that amendment as an essential pre-condition to the realization of the other basic civil rights and liberties which the amendment was intended to guarantee. (Transcript at 79:18-80:11) (CR-1164-1165)

Charles Jensen insists that only discrimination against children is covered:

> I have listened to this charade all day long. It is the only anger I'll express. If people wish to quote the law, they should quote it correctly, whether they are an attorney or a law student, or a defendant. *Marina v Wolfson* and its companion case, not surprisingly *Wolfson v Marina* has to do with discrimination of children, period. The only dicta that was given to this court is just that, dicta, it is not the holding of *Wolfson*. *Wolfson* very clearly said you can no longer rent to so many adults and so many children if they breathe air. They are persons, and that's why [in] 1982 CAA, California Apartment Association and the PBC people changed all the rental agreements and it now says people. To quote *Wolfson* for other than that is to intentionally and knowingly mislead the Court. The Court is dead on the money with the application of Unruh, and its non-application in this case. (Transcript at 81:25-82:13) (CR-1166)

34. The opinion summarizes Appellants' claim (2:10-11): "(7) the trial court unfairly circumscribed Defendants' input on jury instructions;"

Judge Nadler never ruled on whether explicit denial of rights under the Bill of Rights could be construed as arbitrary discrimination, but he DID allow Defendants to quote two powerful governing precedents which support this idea. Thus Michael Halliwell argued on June 19, 2007 (Transcript at 80:11-26):

> *Shelley v Kraemer* [(1948) 334 U.S. 1, 14], the [California Supreme] Court continues, that's a U.S. Supreme Court precedent, here we have California's [highest] Court applying a precedent giving the interpretation of the Federal Constitution by the U.S. Supreme Court. *Mulkey v Reitman* [(1966) 64 Cal 2d 529, 538] continues:
>
> > In the broad sense state action has been consistently found where the state in any meaningful way has lent its process to the achievement of discrimination, even when that goal was not within the state's purpose. In that case *Shelley v Kraemer, supra,* the Court stated at page 14, "The amendment makes void state action of every kind which is inconsistent with the guarantees therein contained in the 14th Amendment and extends to manifestations of state authority in the shape of laws, customs, judicial or executive proceedings."

> Remember, Proposition 14 was struck down on this.

At the very beginning of the modern civil rights era landlords who wanted to keep their neighborhood "lily white" offered the defense that "I'm not prejudiced myself, I'm simply making a business decision to accommodate other tenants I might lose by renting to black people." As the quoted language from *Mulkey v Reitman* shows, a State is not allowed to facilitate discrimination, even by allowing landlords to respond to economic pressure from prejudiced potential customers, because this is disallowed "where the state in any meaningful way has lent its process to the achievement of discrimination, even when that goal was not within the state's purpose."

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

> Judge Rushing told Michael Halliwell, "you didn't file any jury instructions." He replied, "Yes, I did. Pardon me, Your Honor. I certainly intended to." (Transcript at 174:22-23) Michael Halliwell then explained:
>
> We have a document (CR-093 to CR-096) that has – that he [Charles Jensen] refers to as a legal treatise, that I have two proposed jury instructions with the supporting case law. The jury – proposed jury instructions are at the bottom of each one. I give the case law first, and then in bold capital letters is my proposed jury instruction number 1 – on the issue of discrimination and retaliation. And

> then on the issue of burden of proof, which is the second jury, proposed jury instruction, I cite appropriate case law and authorities, and again in capital letters is the proposed jury instruction number 2. (Transcript at 174:23 to 175:5)
>
> Judge Rushing responded: "The document that you submitted is not – I mean, there are things in it that could be used as jury instructions, but that's – you're making me do a lot of work for you and that's not my job." (Transcript at 175:18-21) (CR-1229)

35. The opinion summarizes Appellants' claim (2:11-12): "(8) the trial court blocked key evidence regarding retaliatory eviction;"

Defendants' December 7, 2007 Transcript Excerpts analyze trial rulings:

> Michael Halliwell then tried to link the landlord with the homeowners' association: "All right. As far as you know, was there any avenue whatsoever for you to get your side of this open garage door [complaint] into the hands of the homeowners' association before they made their decision on this matter?" (Transcript at 285:4-7) Charles Jensen said: "Objection, Your Honor. Relevance." (Transcript at 285:8) Judge Rushing ruled: "I'm going to sustain the objection." (Transcript at 285:9) (CR-1388)

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

> There is no basis in law for a blanket exclusion of tenants from dispute resolution proceedings where homeowners have full rights of participation (simply because the governing board of the Meadow Pines Homeowners' Association is elected only by homeowners). The right to petition for redress of grievances is so fundamental that no State has the authority to adopt legislation governing this subject which inhibits its free exercise, and in fact California has adopted statutory protection for this right, as Defendants have noted (CR-190). This statute (CCP 425.16(a) explicitly seeks to curb "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances." Moreover, this statute decrees that "this participation should not be chilled through the abuse of the judicial process. To this end, this section shall be construed broadly." Thus Judge Rushing's handling of this matter violated *S.P. Growers Assn. v Rodriguez* (1972) 17 Cal 3d 719, 730, which states: "A landlord may normally evict a tenant for any reason or for no reason at all, but he may not evict for an improper reason: here, retaliation for the tenant's efforts to vindicate an important statutory right." (CR-1235-1236)

Defendants' November 26, 2007 Transcript Excerpts cite trial proceedings:

Judge Rushing ruled that the jury could not consider whatever role was played by Mr. Paxinos in post-notice concealment of the nature of complaints against James Parker. She said: "Well, his actions taken since the notice are irrelevant." (Transcript at 278:28 to 279:1)

This ruling vitiated Unruh Act prohibition of arbitrary discrimination against tenants seeking to assert their Constitutional Rights, over a broader period of time than the six months immediately preceding a Notice of Termination covered by the ban on retaliatory evictions in Civil Code Section 1942.5(a), and eliminated evidence of probative value with respect to whether a landlord's stated reasons are his real reasons, which is always admissible in anti-discrimination lawsuits, and which (for the period following the original notice, but preceding the filing of a lawsuit to enforce eviction), certainly casts light on whether an eviction is retaliatory.

Judge Rushing excluded Defendant's May 9, 2007 letter to the landlord, saying:

It is becoming more and more apparent to me that the real reason behind the eviction you are attempting to effectuate is Mr. Parker's letter to you mentioning the possibility of legal action to secure enforcement of regulations of the Home-owner Association relating to noisy activities and illegal parking. (CR-070)

> Also excluded by this disregard of rules of evidence was this May, 22, 2007 letter:
>
> Today, I visited the Cotati office of Management 4 H.O.A.s to obtain any documentation supporting my landlord, Gus Paxinos' assertion that the Meadow Pines Homeowners Association Board of Directors have demanded my eviction from the premises I've occupied for ten years. Mr. Paxinos asserts this is because of a "Notice of Hearing" document sent to his daughter. This document alleges that I've made some sort of "threats to my neighbors" at some point in time. However, these "threats" are so foggy and non-specific as to provide virtually no effective way I can address these so called "threats" at this time. (CR-071) (CR-1248-1249)

36. The opinion summarizes Appellants' claim (2:12-13): "(9) the trial court violated Local Rule 2.2D and 5.5A & B in consideration of attorney's fees;"

> Appellants note (May 5, 2008 Supreme Court Appendix A at 3:18-21):
>
> In his misfiled motion of July 3, 2007 seeking the $10,000 in attorney's fees which he was eventually awarded by Judge Rushing (without saying anything whatsoever about any aspect of his billing or his right to any attorney's fees at all), Charles Jensen left out a crucial letter of conveyance which suggested that this motion was a negotiating instrument

and that Plaintiff's counsel would send them an endorsed-filed copy if and when it was actually filed (See CR-176).

Appellants note (May 5, 2008 Supreme Court Appendix B at 15:9-26):

On August 27, 2007 Defendants pleaded for a modicum of Due Process in the handling of motions. But Judge Rushing ignored Defendants' motion (CR-428:1-15) to straighten out Charles Jensen's tangled mess, which said:

> It is an impossible task to unravel the maze of obfuscation and concealment which has clouded every issue in this case WITHOUT FOLLOWING THE PROCEDURES SET FORTH IN LOCAL RULES FOR THE FILING OF MOTIONS. Defendants recommend that a full briefing cycle be allowed, for filing of motions by either side, with 1) a specified date for the filing of the motions, 2) a due date for Opposition to such motions by the other side, 3) a due date for a Reply brief by the maker of the motion, and 4) a hearing date set in advance with enough time between the close of briefing and oral argument to allow for such follow-up inquiries as the Court may deem appropriate after receiving the briefs. If any previous filings are to be used in lieu of a fresh Motion and Supporting Memorandum, they should be filed as per the

> requirements of Local Rule 18.8, so that a reviewing court can clearly see what issues were raised by the Parties (and when they were adopted as positions that the submitting party is willing to defend in oral argument in the trial court and on appeal). This is not intended to preclude references to previously filed material, as the Court may well wish to limit the size of briefs submitted in the new briefing cycle which Defendants suggest. (CR-428:1-15)

Defendant's Brief on Local Rules Violations by Plaintiff's counsel says:

> Charles Jensen has refused since April 12, 2007 to discuss any aspect of the case with Defendants. He consequently made no effort at all to comply with the Meet and Confer mandate of **Local Rules 5.5A and 5.5B** for all noticed motions. His defiance of Meet and Confer rules started with his consistently flouting Local Rule 5.7D, with respect to ex parte applications he opposed. This refusal to confer comes on top of Mr. Jensen's ignoring Local Rule 18.8, whereby he refused to file a brief with the necessary Face Sheet references to the upcoming hearing. Mr. Jensen never told Defendants that he intended to "stand pat" on his misfiled brief of July 3rd. This deprived Defendants of an opportunity to prepare and file

> Opposition before their own filing deadline. (CR426:13-21)

Appellants note (May 5, 2008 Supreme Court Appendix A at 11:5-19):

James Parker refuted the supporting rationale of Judge Rushing's award of $10,000 to Charles Jensen in his Affidavit Re Charles Jensen's Proposed Judgment Order (Exhibit #57 at CR-523 to CR-524):

> So that there can be no mistaking these crucial points, I hereby emphasize for the record that Judge Rushing did indeed rule [in conformity with **Local Rule 2.2D**] with respect to the hearing on Mr. Jensen's "Post-Trial Motion for Attorney's Fees" (at CR-296): "**There will not be a tentative ruling – mandatory appearances will be required.**" There is no doubt that Mr. Jensen remembers this ruling, and this is why he showed up at 8:30 a.m. on Tuesday August 28, 2007 in Division 19, without Defendants' needing to remind him before 4:00 p.m. the preceding day. In his proposed JUDGMENT AFTER MOTION, Charles Jensen states: "Defendant JAMES PARKER did not oppose the motion." There is no doubt that Mr. Jensen knows that this statement is FALSE. Jensen probably ordered Mr. Blonski to sever e-mail communications

> with Defendants, but that did not prevent his becoming aware of Defendants' e-mail in spite of this ban (CR-458) sent 9:24:54 on Mon, 27 Aug to kadinblonski @hotmail.com captioned "Attention Charles Jensen." The first sentence of this e-mail states: "Today's Court Filing provides one attached new document (dated August 27th infra, and the August 22nd documents infra (previously sent to you via e-mail only)." Mr. Jensen certainly knows (since he had six full days to study these documents before the hearing) that the listed "August 22, 2007 DEFENDANT'S REVIEW OF SUBTERFUGES RELATING TO ATTORNEY'S FEES" was not accidental in its use of the singular in "DEFENDANT'S" and that **the Defendant who signed this August 22, 2007 Opposition to Charles Jensen's fees motion was JAMES F. PARKER.**

Appellants note (May 5, 2008 Supreme Court Appendix B at 2:1-17):

Michael Halliwell's "Affidavit re Handling of Attorney Fees Hearing" discusses what should have been an August 28, 2007 Fees hearing, and Judge Rushing's subsequent explanation of her cancellation of it:

> Judge Rushing said when she vacated her Tentative Ruling that she

"inadvertently" overlooked that she had informed the parties that there would be no tentative ruling in the case. This inadvertence was deliberate since Judge Rushing certainly saw that Charles Jensen and the Defendants both showed up on August 28, 2007 expecting a hearing to take place. (We were in the front row and had announced our presence to the clerk in Courtroom 19.) Judge Rushing rearranged the order of cases posted outside the courtroom that day, so that as she called one by one all the cases listed after MCV 191306 were completed, before she called a recess and swiftly left the courtroom. When I stood up and clearly said "Your Honor," the bailiff demanded that I immediately go out into the hallway. I informed the bailiff that Judge Rushing's own order said that there would NOT be a tentative ruling and that mandatory appearances would be required, and offered to show him the order. The bailiff went back and checked with Judge Rushing, and returned with an order that we leave the premises at once or be arrested. Charles Jensen was standing right next to Michael Halliwell and James Parker while all this was going on, and could easily have returned to the courtroom with us and taken part in oral argument, had Judge Rushing not insisted on banishment

> instead. On September 25th, Judge Rushing again employed her strategy of deliberate inadvertence and refused to allow me to point out the inconsistency of her new position on standing with her own prior rulings. She would not allow me to address the court on any subject. When I said two words to correct James Parker's reference to Judge Rushing's "prior motion" (when he clearly meant "prior ruling" the bailiff threatened me with immediate banishment from the courtroom if I said another word. (CR-707:20 to CR-721:6)

Appellants analyze the Transcript of the September 25, 2007 Hearing:

Judge Nadler always allowed Defendants to choose which of them would address a specific issue (Transcript at 7:12-13, 13:25-26, 69:19-20). As he sent the case over to Judge Rushing on June 21, 2007, Judge Nadler recognized the intertwined nature of the interests of both defendants and their right to work together. He pointed out that in this capacity, Michael Halliwell would be held to the same standards as an attorney: "You are here representing yourself. I know you are providing advice to Mr. Parker, and that's fine, but I will tell you that regardless of the fact that you are not represented by a lawyer, you will be held to the same standards as a lawyer." (Transcript at 90:24 to 91:1)

Judge Rushing claimed to have read filings which she could not find:

Judge Rushing never showed any sign of giving any consideration to these pleas; it seems as if at some point she decided to simply set aside anything submitted by Defendants. To lay a foundation for avoidance of yet another postponement, Judge Rushing had said to James Parker: "Let me say this: Whatever you filed I have read. I'll put it that way." (Transcript at 472:9-10) However, she earlier claimed not to be able to find any such filing after James Parker said to her: "I believe I did file some documentation under my name regarding this." (Transcript at 471:23-34) Judge Rushing then claimed: "I looked in the file and I couldn't find anything." (Ibid:25-26) (Appellants' May 5, 2008 Supreme Court Appendix B at 16:1-8):

Appellants note (May 5, 2008 Supreme Court Appendix B at 16:17-23):

James Parker protested the lack of warning that he would have to present oral argument:

> Well, I would take exception, Your Honor, to this because at this point I feel I'm being railroaded here. I'm sorry, but it's fair to give me the opportunity. I had no idea I was going to have to be here and give oral argument, and I cannot speak extemporaneously on this and serve

> myself well at all or serve myself period, Your Honor. So please, give me the opportunity. I will only ask one more time for an extension on this so that – this is $10,000. You know, to me, Your Honor – that may not be much to you but it's very much to me, and I would like the opportunity, if I'm forced to address the Court solely by myself on this, to be given the opportunity to – to prepare, at least something that I can read, you know. Give me a few weeks to do this, Your Honor, please. (Transcript at 473:24 to 474:9)

37. The opinion summarizes Appellants' claim (2:13-14): "(10) the trial court stripped Michael Halliwell of standing with no legal foundation (regarding attorney fee issue)."

Judge Rushing cites no authority for not following Judge Nadler re standing:

> Under California law, if one is self-represented, a self represented person is the only one who may speak for himself or herself. Other persons may show up as support persons and give information and advice to the person but this is the exact same rule in every case. I'm not deviating from it, and so what I am going to say is if Mr. Parker would like to address the motion for attorney's fees, he may do so. (Transcript at 466:2-8)

Judge Rushing literally would not let Dr. Halliwell get a word in edgewise:

> Michael Halliwell: "Could I address this matter?" (Ibid. at 466:9)
>
> Judge Rushing: "Excuse me. First, I'd appreciate you not interrupting me. I'm addressing this question to Mr. Parker. I'm saying, Mr. Parker, would you like to argue against the imposition of attorney's fees?" (Ibid. at 466:10-13)
>
> James Parker: "I would, Your Honor, but not at this time. I'm not prepared. I did not think this was going to happen. My belief was that Mr. – Dr. Halliwell was going to be able to argue this." (Ibid. at 466:14-17)
>
> Judge Rushing: "I don't understand why you would think this in light of – " (Ibid. at 466:18-19)
>
> James Parker: "Because you vacated your tentative ruling." (Ibid. at 466:20)
>
> Michael Halliwell: "Could I address it." (Ibid. at 466:21)
>
> Judge Rushing: "No. I'm talking to Mr. Parker." (Ibid. at 466:22)
>
> Judge Rushing again invokes unspecified legal authority:

> Mr. Parker, you do not – when persons are self represented, the Court is under no obligation to teach them how to practice law or how to conduct their case. The statements I have just made are in the law library in all the practice books, and I'm inviting you, Mr. Parker, at this time if you wish to argue against the imposition of attorney's fees against you, to do so. (Ibid. at 466:22-28)

Judge Rushing then turned to Defendant Michael Halliwell and said: "And I am sorry, Mr. Halliwell, I'm not going to permit you to say anything in this argument at this hearing." (Ibid. at 466:28 to 467:2) Michael Halliwell responded: "Not even on the central issue on whether I should be allowed to speak?" (Ibid. at 467:3-4) Judge Rushing replied: "No, it's the same rule." (Ibid. at 467:5) Michael Halliwell continued: "Well, I believe Your Honor is mistaken. I object for the record." (Ibid. at 467:6-7) Judge Rushing terminated the discussion: "Mr. Halliwell, I've just made my ruling." (Ibid. at 467:8) (May 5, 2008 Supreme Court Appendix B at 4:3 to 5:13)

At the next fees hearing (on the day after Defendants cited this ruling in Appendix B), James Parker asked Judge Rushing: "Since the Court has never cited any case law as to why Michael Halliwell has not been allowed to speak, I would ask the Court to cite some case law as to why not." (May 6, 2008 Transcript at 5:10-12) Judge Rushing replied: "I'm not required to do so and I decline that request." (Ibid. at 5:13-14.)

E. Perspective (threshold claims of parties)

38. The opinion states (2:15): "Plaintiff/Respondent has filed an Opposition Brief addressing the issues raised by Appellants."

Plaintiff's Opposition was inconvenient to use because it was submitted on paper without numbered lines. However, Defendants transcribed Plaintiff's filing onto line-numbered pages (CR-1685 to CR 1698) and this was useful enough to the Court that it apparently did not notice that it had misplaced Charles Jensen's original filing, until it was replaced pursuant to its order of March 10, 2008 (CI 3446-3469).

39. The opinion states (2:16): "In summary, Plaintiff argues the appeal is procedurally defective in form,"

Charles Jensen has always complained about the number of pages it takes to document his various evasive maneuvers and cite the governing precedents which Judge Rushing has trampled into the dust by ignoring (and rewarding) his misconduct. Respondent has NEVER cited a single factual error by Defendants, nor any quotation of supporting authority that is misstated or taken out of context so as to misrepresent it. Defendants have ALWAYS provided a clear statement of their various grievances within applicable length limitations, with supporting material relegated to footnotes or appendices.

40. The opinion states (2:16-17): [Plaintiff argues this appeal] "substantively has no merit whatsoever."

A generous portion of scornful words, set forth without the slightest bit of specificity, has been Charles Jensen's method of operation. HE has created a situation in this case where THERE IS NO MIDDLE GROUND, since only one side bothers to quote from transcripts and cases to provide a documented case. It often happens that there is a great disparity in legal knowledge in cases, but the filings of the lawyer usually resemble those of Defendants in this case, and those of self-represented litigants usually resemble those of Plaintiff.

41. The opinion states (2:17): "This court agrees" [this appeal is defective and has no merit whatsoever].

Because our Founding Fathers received such a raw deal from judges put on the bench by English Kings, they resolutely proclaimed the principle that this is a government of laws, not of men. There is an impressive array of judges lined up on one side of this case, but if the amount of supporting authority they have cited for their positions were equivalent to their clothing, they would all be arrested for indecent exposure. "The Emperor's New Clothes" is only a fable, but the unwillingness of adults to point out the nakedness of their superior resonates so well with our experience, that this story is part of the culture of nearly every literate nation. Of course, there are no non-lawyers on the bench, but unfortunately the result of this is beginning to approximate the treatment of Negroes by many "lily white" state judiciaries a century ago.

42. The opinion states (2:19): "Appellants complain of alleged procedural irregularities in the trial setting procedures."

Defendants' January 24, 2008 Appeal Transcript Appendix states (4:15-21):

> Michael Halliwell explained potentially dispositive aspects the case:
>
> The first aspect is proper setting of the trial date. If that is not set properly, of course, the whole case falls right then and there. It is our position that the Statewide policy is that the judge who sets the trial date is supposed to receive input from both sides before he sets the trial date, which did not happen in this case. I did not know it to be true, but Charles Jensen has said that the policy in this jurisdiction is to automatically take the earliest possible date and set the trial date then. [Consider] the effect of that. And since the initial trial date controls discovery, it is apparently the inadvertent policy of this particular Court, never to allow discovery except to the extent that the other side voluntarily cooperates. Because by setting the trial date at the earliest possible date, and the cut off on completion of discovery is five days before that, there's just no possible possibility of discovery." (Id. at 5:19 to 6:10) Judge Chouteau responded: "You have covered this subject in the papers." (Id. at 6:11-12)

43. The opinion states (2:20): "Appellants have failed to show any irregularities" [in trial date setting].

Missing and demonstrably perjured documents are not irregularities? Wake up and smell the coffee! The deliberate bias against the 90% of tenants in unlawful detainer actions involved in giving the landlord the earliest available trial date, is about as obvious as the sun in the sky, and the palpable reluctance of Sonoma County judges to openly discuss their "peculiar institution" (while nearly the entire state follows trial setting procedures set forth on the Judicial Council's website) calls for an urgent application of Justice Louis Brandeis' favorite remedy ("sunlight is the best disinfectant"). *Green v Superior Court* (1974) 10 Cal 3d 616, 636 observes:

> The landlord contends, however, that the recognition of such a defense will completely undermine the speedy procedure contemplated for unlawful detainer actions. In the first place, however, while the state does have a significant interest in preserving a speedy repossession remedy, that interest cannot justify the exclusion of matters which are essential to a just resolution of the question of possession at issue.

44-46. The opinion states (2:20-21): "Furthermore, Appellants ultimately were given a jury trial (after Judge Nadler reconsidered an earlier ruling) as they wanted."

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

Since Plaintiff's attorney (Charles Jensen) had filed nothing in opposition to Defendants' June 11, 2007 request for a jury trial, nor to their subsequent payment of the jury fee and filing of Form U.D. 150 on June 14, 2007 to complete the request process, Defendant Michael Halliwell pointed to the docket listing at the outset of proceedings on June 19, 2007 and said, "That's supposed to be a jury trial." (Transcript at 4:4-5)

Charles Jensen challenged Defendants' June 14, 2007 Jury Trial Request:

[This challenge pointed out that Defendants' jury request form failed to answer two questions (because Charles Jensen had never sent them a copy of his request for a court trial, as he was required to do), the estimated duration of the trial and whether Jensen's request had asked for a court reporter. Charles Jensen then gave his main objections:]

It goes on to say, too, Your Honor, under the rules that are required for the preparation of the "at issue" itself that your U.D. Form 150, which is what you hold in your hand, at paragraph number two, must identify the address in question. It goes on in that same form in paragraph number five as to "any dates you are not available, the reasons for the unavailability."

My argument is very simple, Your Honor.

Were I to bring such an "at issue" deficient in any one of those four, it would not be accepted at the clerk's office for filing. I am not here to point fingers at Connie, the Court's judicial assistant. She is not empowered or trained in the acceptance of forms. She accepted it as I feel she should have, in the form in which it was presented. Nevertheless, Your Honor, if I were to bring an "at issue" memorandum deficient in any one of those, it would not be accepted. And at this time because the "at issue" memorandum setting forth the request for a jury trial is void and deficient on its face in four separate instances, that the "at issue" be stricken. (Transcript at 6:7-26)

Defendants assumed that all the documents which they had filed were properly before the Court, and that they would have been served by Plaintiff's attorney with a copy of any document he had filed (after his opening complaint, which their June 11, 2007 inspection of the Case File showed was NOT accompanied by a Proof of Service). This was subsequently confirmed, when Defendant Halliwell offered a courtesy copy of previous filings to the Court and Judge Nadler asked, "Have they been previously filed?" Michael Halliwell responded, "Yes, they are already in the case file" and Judge Nadler replied, "I don't need them." (Transcript at 76:4-10) (CR-1132-1133)

Michael Halliwell responded to the motion to invalidate his Jury Trial Request:

I have a similar grievance, and that is when we checked the file as of June 11th, there was nothing whatsoever in the file from him, not a deficient document like he claims we left out some of the information, but nothing whatsoever, [no U.D.] 150 or a facsimile. Somehow he acquired a trial date on June 6th, we was given a trial date of June 19th. As I read the Form [U.D.] 150, it has some very important things on there. The most important is the request/ counter-request. The point where he talks about the time that you are not available for trial, it clearly in my judgment looks like the judge is supposed to do a weighing once people say this time is not available (here is the reason, and this time is not available, this is the reason) the judge sort of balances the equities and sets a date. But the judge never sets this date without any input from the other party. The reason why the things that were left off that he complains of is we were in effect filing a counter-request. We thought the property was already identified. We thought that he had [caused] some error in the bureaucracy to provoke the issuance of the trial date, [by filing] something to indicate these basic facts. I can't believe that the Court would deliberately issue the original trial date without him specifying what the property is, for instance. (Transcript at 7:17 to 8:13)

Michael Halliwell reminded Judge Nadler of his June 11, 2007 Case File analysis:

On June 11th I became concerned about this

very issue, after having received the copy of the notice of the setting of the 19th as the trial date entirely [without input from Defendants]. We've received nothing in the mail that was allegedly mailed to us. Not only that, I went to the precaution of having the clerk, who Xeroxed the 11 pages of filings by other than our side that were in the file at that time was – actually it was 14 pages, true and complete copies. 14 pages, we paid $0.50 each, we got a receipt for $7. His document wasn't there on the 11th. I made a point of looking for it, and I don't know what your are doing about your processing of documents, but we were operating on a different record than you are operating on, and I don't understand why as of the 11th, the document that you are looking at was not in the file. We made due diligence to look for it, but we never received it in the mail. Absolutely, I will swear – I will affirm that no such document ever reached us, that he is now describing and that you are looking at, notwithstanding a proof of service that it has been mailed to us. We never saw it. (Transcript at 8:28 to 9:20) (CR-1134-1135)

Michael Halliwell gave his additional defenses of Defendants' right to a jury trial:

The two things I need to add are this: in good faith I believed the premises were adequately described by his request, even though I wasn't able to find it, I knew he made a request for a non-jury trial. I believe that was adequately expressed, there was no question that this was

all about 1041 Copeland Creek Drive. My failure to include that piece of information on the form – (Transcript at 28:25 to 29:4)

Judge Nadler cut in: "So you knew he had the request for trial?" (Transcript at 29:5-6)

Michael Halliwell explained what he knew and continued:

I assumed that he had made a request. I mean, how does this date come out of nowhere? The second point is the important one, I was operating not only on the reliance on my interpretation of that, but on Connie's [direction] that this is the way it has to be done, and the lady at the window, this is the way that it had to be done. I don't think I should be deprived of a jury trial. The third thing, the reason I didn't answer lack of availability, is because I'm available all the time. I was told that was fine [in response to] "Are there any days that you aren't available? Now I'm done. (Transcript at 29:7-18) (CR-1146-1147)

Judge Nadler gave his decision on Charles Jensen's motion for a court trial:

Okay, in trial we are. Let me start off with ruling on some motions that were made this morning. The motion to strike the counter-demand is granted, and that will be the counter-demand for a jury trial, based on the deficiencies of the demand. (Transcript at 31:6-11) (CR-1148)

At the scheduled 9:00 AM time for the start of proceedings Michael Halliwell presented a copy of Defendant's motion for reconsideration of striking their demand for a jury trial to opposing counsel and to Judge Nadler's judicial assistant. Judge Nadler entered the courtroom at 9:37 AM, and addressed the parties:

I have the motion for reconsideration of the Court's order vacating or striking the demand made by the Defendants in this case, and the reason for the delay has been that the Court has been reading the pleadings, re-evaluating the Court's decision in this case, and the Court has reached the following conclusion, which will come as some surprise.

In reality, the argument is that the counter-request left information out, and that it should be construed strictly as it would for the original filing, and if so construed the clerk would not file it, therefore, the Court should strike the counter-request. The argument made by Defendants was that the information that was left off of the counter request essentially was information that was contained in the original request. The law is clear that in Unlawful Detainer cases, a party is entitled to a jury in most circumstances, almost all circumstances, and the question then becomes whether or not these defendants are or are not entitled to a trial by jury.

It is convenient for the Court to consider the

realities of a jury trial in light of these circumstances and to make a decision that includes consideration of those realities. In retrospect, and considering these issues, the Court is inclined to grant the motion for reconsideration in this case and allow this case to go to a jury, reluctantly, but perhaps that is the right thing to do.

Now I say that, Mr. Jensen, because I know that that puts a much different slant on this case, and I know you have geared up for something other than a jury trial, but I will also say that the Court had done considerable soul searching with respect to this issue and believes that, considering all factors, that a jury trial would be appropriate in this case. I'll let you respond to it, but I will tell you that the decision that the Court is coming to is not made flippantly and without considerable consideration and reflection, and the Court is acutely aware of the circumstances of this matter and issues of efficiency that would otherwise be implicated based on those issues.

But that being said, the law is equally clear that parties are entitled to a trial by jury, and the deficiencies on the counter-request are not really substantive considering the fact that they -- that it is a counter-request and the information for most purposes is information the Court had in the original request. Matters such as unavailability, that's left blank. The Court assumes complete availability. The substantive portions that will be left blank are

> portions that were addressed by your client in the original request. (Transcript at 86:3 to 87:22 (CR-1168-1169)

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Judge Nadler ignored the fact that under Local Rule 4.10H(1), for a trial due to start at 9:00 A.M. on Monday, proposed jury instructions were not due for about 72 hours after his Friday noon deadline (after the completion of jury selection "before the first witness is sworn"). He also ignored the fact that he and Mr. Jensen had created whatever procedural problems there were by challenging a demand for a jury trial where THERE WAS NO MISSING ADDRESS AT ALL, IT WAS ON TOP OF DEFENDANT'S FORM U.D. 150 (BECAUSE THEY LIVED AT THE PROPERTY IN DISPUTE, WHICH THE OPPOSING COUNSEL AND THE COURT SURELY KNEW, THIS BEING AN EVICTION PROCEEDING). (CR-1171)

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Michael Halliwell gave Defendants' request to salvage part of their lost 72 hours:
>
> I basically didn't even get my sentence completed. I was about to ask for the modest request of maybe 2:00 or 3:00 o'clock on Friday so we'd have a little more preparation time to

learn what is involved in making our input into the jury request. Instead of just noon tomorrow, what about 2:00 tomorrow? That time is valuable to us. (Transcript at 91:26 to 92:4)

Judge Nadler ignored the complex pretrial matters he had deferred from 6/18 to 6/19 (CR-082) as was made necessary by Charles Jensen's refusal to meet and confer as required by Local Rule 5.7D (when he opposed Defendants ex parte applications for procedural relief), which Defendants expected to iron out before any jury trial started on June 19th (before Charles Jensen sidetracked everything with two no-notice motions he read from his own notes, without giving a copy to Defendants). Thus he proclaimed:

Noon tomorrow is the Order, and the reason for that, sir, is the rules require you to have these papers [the other item was a joint statement of the case, pursuant to Local Rule 4.10D, which could not be prepared until Charles Jensen relented from his refusal to confer with Defendants] prepared and ready to go and should have had them prepared and ready to go this week and did not do so. (Transcript at 92:5-8)

Michael Halliwell tried to be conciliatory, and said in response: "That's fine. I'm not disputing that. Request denied. I just wanted you to be aware of the scope of the request." (Transcript at 92:9-11) Judge Nadler gave an

> explanation for his ruling (which Defendants discovered was erroneous when they delivered the papers in question just before noon on Friday, and received a tongue lashing from the security guard who was closing Division 19 for the weekend). Judge Nadler told Defendants: "Judge Rushing needs an opportunity to review those in advance." (Transcript at 92:12-13) (CR-1172-1173)
>
> Michael Halliwell tried to determine what he might have to study before Monday: "I have only one sentence of observation on this matter." (Transcript at 93:19-20) Judge Nadler concluded his role in the case with this statement: "I don't want to hear it, Mr. Halliwell, I'm not the judge now." (Transcript at 93: 21-22) (CR-1174)

Defendants' March 20, 2008 motion for reconsideration raises a vital issue:

> Appellants cite caselaw on discovery after a new trial date is set:
>
> Charles Jensen states: *"Pursuant to Code of Civil Procedure sections 2030 and 2024, discovery in an unlawful detainer is different and is based on the first date for trial which in this case was June 19, 2007. Appellants failed to serve any discovery prior to that date."* (R6:13-16) *Fairmont Insurance Co v Superior Court* (2000) 22 Cal 4th 245, 246-247 notes: "Code of Civil Procedure section 2024, subdivision (a), provides that the cutoff date

> for completion of discovery proceedings is 15 days 'before the date initially set for the trial of the action'; continuance or postponement of that initial trial date does not reopen the time for discovery." In *Fairmont, supra*, our State Supreme Court notes that in *Beverly Hospital v Superior Court* (1993) Cal.App.4th 1289, 1293 the Court of Appeal ruled: "A case does not have one everlasting 'initial' trial date, but may have a new 'initial' trial date corresponding to a scheduled retrial of the action." While Judge Nadler's reconsideration of his own ruling (on denying Defendants' request for a jury trial) does not quite amount to a "reversal" which implies action by a higher court, it had the same functional impact on the case, so as the State Supreme Court notes in *Fairmont*, after moving the trial date from June 19, 2007 to June 25, 2007 "the time clock for the 'initial trial date' under the Discovery Act is reset." (22 Cal 4th at 250-251). (2A18:10-24) (Id. at 56:14-24) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 4)

47-48. The opinion states (2:21-22): "Assuming arguendo any irregularities, Appellants fail to show any reversible error."

Defendants' March 20, 2008 motion for reconsideration discusses Judge Nadler's New Trial ruling:

> Even though Judge Nadler had misapplied Local Rule 4.10H(1) when he insisted that Defendants file their proposed jury instructions 72 hours before they were

> actually due under Local Rule 4.10H(1), Judge Rushing went along with Charles Jensen's attack on the format of Defendants' submission: "They are in some form of a legal treatise, but they're not – they're not BAJI. They're not CALJIC." (Transcript at 166:23-25) Judge Rushing ruled that the lack of a timely submission by Defendants in the proper format constituted "a waiver of their right to submit anything in the form of a written statement to be read or the jury instructions. That time has come and gone." (Transcript at 169:21-23) (Id. at 98:21 to 99:4)

49. The opinion states (2:24): "Appellants appear to argue that the trial court lacked jurisdiction"

Defendants' March 20, 2008 motion for reconsideration responds:

> Here is the precise basis for Defendants' request for a ten-day continuance (which readily translates into, "please wait until you have jurisdiction before taking any other action, than facilitating proper acquisition of jurisdiction."):
>
> > It seems entirely unlikely that any sort of good faith effort was made to serve papers personally, as "Posting and Mailing" Service requires (according to California Tenants' Rights at 15/14):
>
> In limited situations, state law allows the landlord's process server to post copies of the

> Summons and Complaint on your front door and mail a second set of copies (CCP Sec 415.45). Before a landlord can use posting and mailing, the landlord must get written permission from a judge after showing that the process server made several unsuccessful attempts to serve the papers at reasonable times. If this method of service is used, your time to respond is extended from five to 15 days. (CR-014:4-10) (Id. at 26:25 to 27:9) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 6)

50. The opinion states (2:24-25): [Appellants challenged the use of expedited procedures] "because of defects in the proof of service."

Defendants' January 24, 2008 Appeal Transcript Appendix states (8:7-19):

> At the January 24, 2008 Appeal Hearing, Defendant Michael Halliwell added another item to his listing of pivotal aspects of the case: "I had failed to mention an important aspect of the case dealing with the perjury charges regarding Charles Jensen relating to the [original service] and Form UD-150, and neither of which were in the file when the trial date was set – whatever your policy is, as far as trial date setting, [it is wrong] to set a trial date and have no proof of service that we've received it, and no proof of service relating to the UD-150. This is something that Judge Nadler explicitly reserved ruling on, but when we went to Judge Rushing, she said we're past

all that. Basically, we were victims of deliberate, unethical tactics." (Transcript at 9:4-13)

Appellants complained (CR-666:12-22) about Judge Rushing's failure to consider the matters which Judge Nadler had deferred ruling on, and claimed that this amounted to an abuse of a trial court's discretion, and cited *Longshore v Pine* (1986) 176 Cal.App.3d 731, 737:

> Although discretion is vested in the trial judge, that discretion is not unfettered. It cannot be exercised arbitrarily, but must be an impartial discretion to be exercised in conformity with the spirit of the law and in a manner to subserve the ends of substantial justice.

When Charles Jensen's first fees motion was presented to Defendants in person on July 3, 2007, its letter of conveyance (CR-176) stated that it was an unfiled motion whose purpose was to initiate negotiations about a voluntary payment of a reduced fee, and the letter promised an endorsed filed copy if and when the motion was filed (if no suitable offer was forthcoming from Defendants). Defendants felt that it was essential to respond from a position of strength, and so prepared a line-by-line refutation (CR-181 to CR-233) of what they thought was an unfiled motion (which still appeared to be so on July 16, 2007 when they filed their detailed refutation). On July 20, 2007 when Defendants filed their Affidavit Concerning Plaintiff's Misrepresented

Filings (CR-234 to CR-266), they asked to inspect the file but were told by window clerk, Dave Sharp, that it was unavailable (because it had been shipped to Division 19, on account of the filing of a fees motion, according to the computerized docket). It later turned out that the fees motion (said by Charles Jensen's junior partner Kadin Blonski to be unfiled on July 3, 2007, was supposedly filed on this date, even though it was not in the Case File on July 16, 2007).

51. The opinion states (2:25): [Appellants argue that because the trial court did not follow preliminary procedures required in unlawful detainer cases] "therefore the judgment is void."

Defendants stand by their strongest line defense, set forth in pretrial proceedings:

> I wish to mention that the entire applicability of the Bill of Rights in the 50 States is a matter of Due Process under the 14th Amendment, those are amendments of the Federal Constitution that would have no application at all to state action were it not for the fact that the basic rights under the Bill of Rights are considered to be essentials of Due Process and, therefore, enforceable against the states. We are right in the middle of the Bill of Rights in this situation. We have a case where Mr. Parker is denied the right to confront his accusers. We have this anonymous complaint to go [away]. We have the situation [where] he has not been able to find out the nature of the charge against him, another aspect of the

> Sixth Amendment. And finally, he was in the very act of petitioning for redress of grievances protected by the First Amendment that alienated the landlord. So this landlord is engaged in a type of discrimination that's a straight on challenge to the Bill of Rights. And as our last line of defense, we plead the Due Process Clause of the 14th Amendment. (Transcript at 80:27-81:19) (Defendants' analysis of key grievances filed November 13, 2007 at CR-1165)

F. Answers (general/special appearance)

52. The opinion states (2:26): "Both Appellants filed an Answer."

Whenever Charles Jensen paints himself into a corner, he invokes *res judicata* (which is easy to do where the Appellate Branch has relied on *Respondents'* briefing, and *refused* to wait until key transcripts could be cited in Appellants' briefing). Thus Plaintiff's June 23, 2008 Opposition (at 3) says:

> Any reference to the trial date setting or whether or not anyone's Answer was received is *res judicata* and Respondent shall not waste the Court's valuable time arguing same.

Halliwell's June 2, 2008 Opening Brief (2/1/08 Appeal) states (2:15-22):

> On June 6, 2007 when Mr. Jensen managed to have a trial date set (without input from either Defendant), a whole week earlier than

> he was legally entitled to, the caption on the Order & Notice of Trial (CR-010) said "CHRYSANTHE E PAXINOS, Plaintiff vs. MICHAEL J HALLIWELL, ET AL, Defendant."
>
> In his June 14, 2007 Declaration, Charles Jensen falsely claims to have never received Michael Halliwell's Answer to his complaint, but he apparently looked closely enough at this Answer to claim in the same Declaration, that both Parker and Halliwell "have filed individual general appearances via their 'Answers.'"

53-55. The opinion states (2:26 to 3:1):"Although their answers did contain one paragraph alleging proof of service defects, their Answers also contained answers on the merits of the case, and also requested affirmative relief."

Defendants' March 20, 2008 motion quotes prior briefing relating to the nature of Defendants' Answers, to show that they were trying to enforce service requirements, and not seeking any sort of affirmative relief.

> In fact, Defendants never had any channel for requesting affirmative relief, because Judge Nadler would not allow them to get onto his Law and Motion Calendar, and the Ex Parte channel offered no opportunity to rebut misrepresentations by the opposing party and no opportunity to explain the situation via oral argument. Preliminary Phase Filings (June 1, 2007 through June 12, 2007) in

Defendants' Sequential Excerpts and Analysis of Case Record, document what we did to try to get the Court to take cognizance of what must certainly be deliberate misconduct by opposing counsel:

> According to the June 1, 2007 Summons which initiated MCV 191306 (**CR-002**) "by personal delivery" to 1041 Copeland Creek Dr, its filing with the court was supposed to be accompanied by Proof of Service of Summons Form POS-010. When Defendants filed their Answers on June 4, 2007, the Window clerk insisted upon a Proof of Service showing that the Answer had ALREADY been mailed to Plaintiff or his attorney, even though there was no Proof of Service in the Case File for the Summons Defendants were answering.
>
> Prejudgment Claim to Right of Possession Form (**CR-003**) is the blue-ink original of the copy dated 6-**1**-07 delivered on that date to 1041 Copeland Creek Dr (by tossing it over a locked patio gate). However, the date has been altered to read "6-**2**-07" for its DATE OF SERVICE. No such form (or any legal document) was delivered on June 2, 2007 to either James Parker or Michael Halliwell at 1041 Copeland Creek Dr (or at any other location).

Summons Form SUM-130 (**CR-004**) is the blue-ink original of the copy dated 6-1-07 delivered on that date to Defendants' residence. However, its date has been altered to state that it was given to defendants "by personal delivery" on "6-2-07." The altered date is significant because the top of the form states: "You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff." In applying the five day rule to the 6-1-07 version of this document, Defendants were forced to Answer almost immediately, which they did on June 4, 2007 (to have a one-day "margin of error" to correct any flaws in an attempted filing). Defendants' Answer was compelled in order to bring this vital fact to the attention of the court "WITH RESPECT TO THE SUMMONS AND COMPLAINT THAT TRIGGERS THE DEADLINE FOR AN ANSWER TO AVOID A DEFAULT JUDGMENT, THE OCCUPANTS OF 1041 COPELAND CREEK DRIVE HAVE RECEIVED NOTHING IN PERSON OR SO FAR IN THE MAIL."

The mailing envelope (**CR-005**) in which the two documents bearing dates of delivery which were altered from "6-1-07" to 6-2-07) bears a postmark of "**04**

JUN 2007" (yet the handwriting on the envelope is the same as on the face of the altered-date forms). When Defendants received this mailing (the only item they ever received from Plaintiff or his attorney in the mail – from the day MCV 191306 was filed, to the day they were evicted from 1041 Copeland Creek Dr., pursuant to the verdict in that case), they had already filed their June 4, 2007 challenge to the adequacy of service. The differently dated versions of the Summons and Complaint Defendants received seemed to be an attempt at "posting and mailing" service (but without the required court approval) and (as part of their effort to clarify the factual situation, in order to provide the basis for a formal motion) Defendants sent a letter to both Plaintiff and his lawyer (CR-061 to CR-064) quoting in detail the various legal ways that service could be performed in Unlawful Detainer cases. (Id. at 2-4)

Our Answer (CR-008) challenged Plaintiff's service on two bases:

> 6c of the Complaint, The defendants not named in item 6a are "Unknown" is FALSE. Mike Halliwell was known to be a subtenant as result of his participation in the (three-way) telephone conversation with Charles

Jensen on April 12, 2007, and as a result of an April 25, 2007 letter he sent to Mr. Paxinos. It is not clear why Mr. Halliwell's name was not included with Mr. Parker's as a Defendant in the complaint; it seems possible that this was a trap so that the Summons (which was not placed where Mr. Halliwell was at all likely to see it) could trigger a requirement that "If you do not file this form, you will be evicted without a hearing."

PROOF OF SERVICE is not as claimed and/or not in conformity with legal requirements. This is important because the manner and timing of service governs Defendants' response deadlines to avoid a default judgment. Personal service was NEVER accomplished in the preliminaries to, or in initiation of, court filing NOR were Substitute Service requirements met – to wit: "If several unsuccessful attempts are made to personally serve you (three is the general rule), the server may make substitute service. . . [by] mailing a copy of the papers to the address where the papers were left." (California

> Tenants' Rights 15/14). (Id. at 4-5) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 7-9)

56-57. The opinion states (3:1-2): "Appellants then participated in the action, and never filed a motion to quash."

In June 25, 2007 pre-trial proceedings, Charles Jensen said of Defendant:

> He is estopped from claiming a deficiency in service by having filed a general appearance. He could have filed a motion to quash. That's how you do it in unlawful detainers. (Transcript at 160:16-18)

Defendants' December 7, 2007 Transcript Supplement cites a major obstacle:

> Since the service issue was clouded by perjured Proofs of Service, Defendants were in no position to file an immediate Motion to Quash (which would have required a demonstration that an "officer of the court" was acting in a fashion that would make him vulnerable to being drummed out of the legal profession). The full extent of Charles Jensen's perjury did not become evident until documents missing from the Case File on June 11, 2007 (CR-025, CR-242, and CR-290 to CR-291) surfaced at trial. (CR-1362 to CR-1363)

Appellants' March 20, 2008 Motion for Reconsideration describes Defendants' attempts to bring crucial facts related to service to the attention of the Court:

> Defendants' Sequential Excerpts and Analysis discusses documents stamped as if filed on June 6, 2007 which were missing from the Case File on every occasion that Defendants were allowed to inspect it, in the two weeks following their first inspection and documentation of its contents on June 11, 2007 (**CR-025 to CR-045**):
>
> > Plaintiff's Proofs of Service (**CR-129** and **CR-130**), which Defendants saw for the first time when they inspected the Case File on June 25, 2007, are inconsistent (in claiming personal service of the Summons and Complaint on June 2, 2007) with many statements relating to service made by Defendants made in the preceding three weeks, none of which were contradicted by Plaintiff's counsel Charles Jensen (although he had many opportunities to do so in his Oppositions to Defendants' motions and briefs):
> >
> > > Personal Service was NEVER accomplished in the preliminaries to, or initiation of, court filing NOR were Substitute Service requirements met – to wit: "If several unsuccessful

attempts are made to personally serve you (three is the general rule), the server may make substitute service." WITH RESPECT TO THE SUMMONS AND COMPLAINT THAT TRIGGERS THE DEADLINE FOR AN ANSWER TO AVOID A DEFAULT JUDGMENT, THE OCCUPANTS OF 1041 COPELAND CREEK DRIVE HAVE RECEIVED NOTHING IN PERSON OR SO FAR IN THE MAIL. (**CR-008 on June 4th**)

It is clear that no personal service was made, and it appears likely (from the one-shot methods used in prior Notices to Quit, and the timing of Summons and Complaint service) that the required several good-faith attempts at personal service were not made (which is an indispensable ingredient for any other type of service). (**June 11, 2007 letter to Charles Jensen, filed at CR-063**)

There is NO Proof of Service in the File, nor has any been provided to [Defendants] (so it is not clear who is supposed to have performed service). It is clear that any document presented for

filing (which the opposing party is entitled to receive), **must have already been served** (in person or by mail) BEFORE it can be accepted for filing. Apparently Plaintiff or his attorney planned to accomplish service after filing with the Sonoma County Superior Court: The June 1, 2007 date on the copy posted near the entrance to 1041 Copeland Creek drive is "handwritten over" to become June 2, 2007 on the copy mailed to this address; however the postmark date is June 4, 2007. (**CR-026 on June 12th**)

In the absence of any proof of service relating to the Summons and Complaint, [the Notice's] proof of service may be probative inasmuch as it clearly admits only 1 attempts (sic, clearly implying that more than one is needed) on each of the two days when service was performed, for the 60-Day and 3-Day Notices to Quit. (**CR-030 on June 12th**)

Although both Mr. Parker and Mr. Halliwell are certain that neither one of us was personally delivered the Summons that claims on its face to have been thus conveyed, we were con-

cerned that we might not be able to convince a judge that the door had not been slammed in the face of the person who evidently saw the lights on and tossed the Summons and Complaint over the patio fence on June 1, 2007. There is nothing accidental about the fact that there is NO Proof of Service in the case file to support the date OR manner of service of Plaintiff's Summons and Complaint. However, due to the fact that various documents are sometimes "in the pipeline," it was not until Defendant's June 11, 2007 Memo in Support of a Continuance and a Jury Trial, served on Mr. Jensen by Fax and by mail (along with the aforementioned June 11, 2007 letter dealing with defects in service) that this absence could be definitely known and proven. **(CR-054 on June 15th)**

There are various ways that a litigant may lose his or her right to challenge a court's jurisdiction based on failure to allege that the mode of service of the opening complaint described in the Proof of Service was legally inadequate, but the absence of this essential certification deprives

> the opposing party of knowledge of how service was claimed to have been performed, and hence any ability to know whether it was adequate or not. **(CR-073 on June 17th)**
>
> [Mr. Jensen's failure to ever provide a copy of filed documents to Defendants] is a part of a larger pattern of falsified (or wholly lacking) Proof of Service, which Defendant has alleged in his Affidavit of June 17, 2007, a matter on which Mr. Jensen's responding Declaration of June 18, 2007 is conspicuously silent. **(CR-088 on June 21st)**

Gena Redondo (in her sworn statement dated 6-04-07) claims that on 6-02-07 at 7:45 PM, she performed personal service of the Summons and Complaint on James Parker at 1041 Copeland Creek Dr. However, at this time James Parker and Michael Halliwell were working together at Mr. Parker's computer in an upstairs bedroom and both attest that no such service took place (nor were any court documents at all delivered that day). Gina Redondo (in another sworn statement dated 6-04-07) claims that she met with James Parker on 6-02-07 at 7:45 PM (to initiate substitute service for Michael Halliwell) and

> "informed him of the general nature of the papers." During the entire evening of June 2, 2007 Mr. Parker and Mr. Halliwell met with no one else, and they both attest that the conversation alleged by Ms. Redondo is a total fabrication. (Id. at 22:24 to 24:18)

After the jury was sent off to deliberate, Judge Rushing permitted the parties "to place on the record anything that was said at sidebar that wasn't argued on the record." (Transcript at 442:9-10) Defendant Michael Halliwell responded: "I had a motion to show that they engaged in perjury in the process of getting this case started, and that operated to deprive me of any discovery by this manipulation of the time line." (Transcript at 443:3-6) When she commented on this issue, Judge Rushing said: "Such things as requests for finding Mr. Jensen, for example, guilty of perjury or some things that have to do with the service of process, I ruled that those, either they're irrelevant, inadmissible in this trial or, per timing, it's too late." (Transcript at 446:21-25) Judge Rushing added: "In the Court's view, the defendants were trying to go backwards. My job is to move the case forward." (Transcript at 447:1-2)

Judge Rushing seemed to miss the point that **Defendants were only trying to get back to where Judge Nadler had left this** issue. **[Judge Nadler told the parties: "I'm not making any findings right now, I**

> **haven't made any findings about service, whether it was proper or not, I don't want you to have that impression."** **(Transcript at 14:2-5)]** (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 9-13)

58. The opinion states (3:2): "The Answers constituted a general appearance."

Appellants' March 20, 2008 motion for reconsideration cites this key precedent:

> *The 1880 Corporation v Superior Court* (1962) 57 Cal 2d 840, 843 held:
>
> Interrogatories which are relevant to the subject matter of a motion to quash are consistent with the character of a proceeding had upon a special appearance. [A party] should have the right to protect itself [with respect to discovery] without making a general appearance. This court has the power in carrying out the objectives of legislation, to determine what constitutes a special appearance. For example, it has been held that [an answer] is ordinarily general in character [but fact-finding to enforce] the Code of Civil Procedure did not constitute a general appearance, because a contrary result would "emasculate" the statute. [Citations.] The discovery statutes contain provisions authorizing the granting of relief against [misrepresentations] and [these sections require that] a defendant should not be

> penalized for seeking the protection afforded by the legislation. Accordingly, we hold that objections [laying the foundation for] a motion to quash, do not constitute a general appearance. (Id. at 34:14-21)

59. The opinion states (3:2-3): "A general appearance operates as consent to jurisdiction of the parties;"

Parsons v Superior Court of Marin County (2007) 149 Cal.App.4th Supp. 1, 6 notes this basic principle: "Strict compliance with the specifically prescribed notice conditions is a prerequisite to invoking the summary procedures of unlawful detainer." *Parsons* also notes that rules for a party's challenging the sufficiency of service should not be applied so as to construe this as a general appearance, because this "moots the very point he is seeking to raise." (*Delta Imports, Inc. v Municipal Court* (1983) 146 Cal. App. 3d 1033, 1036.)

60. The opinion states (3:3): [Appellants consented to] "dispensing with the requirement of service of process,"

Defendants have a right to invoke court processes to challenge invalid service:

> Our Supreme Court ruled in *Lacrabere v Wise*

(1904) 141 Cal 554, 556:

> It is an essential prerequisite to the maintenance of an action for unlawful detainer, under section 1161 of the Code of Civil

> Procedure, and that a three days' notice . . . should be served on the defendants, as subdivision 2 of that section requires. It is equally essential to allege the service of such demand in the complaint, and, if controverted, prove on the trial. Service is an act to be performed before suit, a fact to be alleged in bringing suit, and a fact to be proven to successfully maintain it, and such fact is to be proven as any other disputed fact in the case. The rule is, that best evidence must be produced which the nature of the transaction will permit, the testimony of witnesses given in open court where the adverse party may have an opportunity of cross-examination. Affidavits are not in the nature of the best evidence by which to prove issuable facts. They rank on no higher plane for that purpose than hearsay evidence.

61. The opinion states (3:3-4): [By seeking more than starting over after proper service, Defendants' actions had the effect of] "curing defects in service. *Dial 800 v Fesbinder* (2004) 118 Cal.App.4th 32, 52."

Defendants' March 20, 2008 motion for reconsideration responds:

> *Dial 800 v Fesbinder* (2004) 118 Cal.App.4th 32, 53 observes that "if a defendant seeks any affirmative relief on the merits, the application may be deemed a general appearance." The only relief Defendants ever sought, until their last efforts to secure a continuance failed on June 25, 2007, was to be given back the ten

> days of preparation time they were robbed of by Charles Jensen's false claims of personal service. One can read through the entirety of the Reply Brief signed by Charles Jensen and not find any plea for "affirmative relief on the merits" quoted. What Defendants sought was a TEN DAY POSTPONEMENT of any exercise of the court's jurisdiction. (Id. at 43:13-21) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 7)

62. The opinion states (3:5): "Appellants never established any defects in service."

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> James Parker comments on the timeline [which was distorted by false service claims]. He says: "We have problems with everything you've said, the service of [Plaintiff's initial complaint], the clarity of the documentation." (Transcript at 13:27 to14:1) James Parker refers to Defendants invocation of their right to make a special appearance to challenge defects in service, as they did in their Answer of June 4, 2007:
>
> WITH RESPECT TO THE SUMMONS AND COMPLAINT THAT TRIGGERS THE DEADLINE FOR AN ANSWER TO AVOID A DEFAULT JUDGMENT, THE OCCUPANTS OF 1041 COPELAND CREEK DRIVE HAVE RECEIVED NOTHING IN PERSON OR SO FAR IN THE MAIL. (CR-008)

Judge Nadler says to James Parker about his service-of-documents complaint:

I want to be clear about something, I'm not making any findings right now, I haven't made any findings about service, whether it was proper or not, I don't want you to have that impression. (Transcript at 14:2-5)

Judge Nadler then asks the other Defendant, to comment. (Transcript at 14:20-21)

Michael Halliwell discusses Plaintiff's Form UD-150 service and filing defects:

First off, we have some factual predicates we've really got to nail down here. I don't think Your Honor would rule and grant this motion if, in fact, you believed that contrary to the proof of service you have in the file that he never mailed the [Form U.D.] 150 to us, in other words, the fact that it is in the file, it was in the bowels of the bureaucracy. I'm the one that went to the Court. I got the little initials at the top, "CO," the person who was at the window, who gave me the complete file as of the 11th. Not only am I alleging to you that I never received a document he says he mailed to me, I got one of the court employees, because I actually enumerated the 14 pages in the file that were provided by other than plaintiff, I mean defendant. We didn't enumerate our own things. But at the time on June 11th when I served the document with

> the Court and the opposition, it was in the case file, it lists the actual documents other than those provided by us that were physically in the file. And this document, as of June 11th at 10:00 o'clock, signed off by a person with initials "CO," and a receipt for the 14 pages that were there, that I've even got a copy of the actual 14 pages that were there. (Transcript at 14:22 to 15:16) (CR-1141-1142)

63. The opinion states (3:5): "Even if there were defects," [Appellants submitted to going forward in spite of them]

> On June 25, 2007 Defendants got to see a long-missing document:
>
> Michael Halliwell said "I'm referring to a proof of service. I'm sorry. Proof of Service of Summons. We have not seen that." (Transcript at 158:9-10) Judge Rushing responded: "Then I'm going to have to tell you that things having to do with proof of service, we're beyond that." (Transcript at 158:16-17) Michael Halliwell gave Defendants' perspective on this issue: "We do not challenge the jurisdiction of this Court and service is adequate to establish a jurisdiction, but there are two alternatives under unlawful detainer law. Under one we have five days. Under the other we have 15. We allege and I need to pursue this matter in some detail but we allege they in fact said in open court that they had personally served us, and this is simply not true, and this document does not support his sworn testimony, but

> instead supports a different form of service. Therefore, we were robbed of ten days." (Transcript at 158:26 to 159:8) After complaining of Charles Jensen's manipulations to preclude discovery, Michael Halliwell continued: "And his only defense to our discovery request is that it is too late; therefore, this proof of service on the matter of original service is very much relevant inasmuch as the ten days would have allowed us to do discovery." (Transcript at 159:13-16)

64. The opinion states (3:5-6): "Appellants made a general appearance in this case and therefore submitted to the trial court's jurisdiction."

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Judge Nadler comments on the impact of trial-date setting on discovery timelines: I can't recall having not read the file. There were two different notices, in each of those notices there was an indication of what the alleged problems were. And, furthermore, it would seem to me that, considering the summary nature of these proceedings, that's what the law says. Unlike other civil proceedings, and this area, as to these sorts of matters, the law sets up a system whereby they do go to trial extremely fast and they typically do not wait for extended discovery. And I know that performing discovery prior to trial is difficult because of these very short time frames, but that's what the law is, and that's what we have to live

> with. In fact, I'm required to give these cases preference over other matters because it is unlawful detainer versus something else. (Transcript at 12:12-27) (CR-1139-1140)
>
> This ruling violates *Schweiger v Superior Court* (1970) 3 Cal 3d 507, 514 which holds:
>
> Certainly the interest in preserving the summary nature of an action cannot outweigh the interest of doing substantial justice. To hold the preservation of the summary proceeding of paramount importance would be analogous to the "tail wagging the dog."

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> Defendants' Memorandum Supporting a Motion in Limine for the rescheduled trial, discussed the legal framework for balancing speed of adjudication with justice:
>
> > #1.Violation of Sixth Amendment rights justifies invoking the Due Process Clause of the 14th Amendment. 2. The express terms of both CCP § 1179(a) and CCP § 425.16(a) give primacy to procedural protection of the right to petition for redress of grievances. 3. Plaintiff's recent intransigence has emphasized the importance of the redress of grievance issue. 4. All of the concerns stated in CCP § 1170.5(c) through 1170.5(f) are met by Defen-

> dants' stipulation holding harmless Plaintiff for acceptance of rent payments proffered by Defendants. (CR-101) (CR-1132)

Defendants' December 7, 2007 Transcript Supplement analyzes trial rulings:

> The 60-Day Notice that laid the foundation for eviction said "THIS TERMINATION IS FOR CAUSE" and Defendants immediately initiated intensive efforts to secure the Report from the Homeowners' Association's March 26, 2007 Hearing, the Notice of which was attached to the 60-Day Notice. In our only conversation with Charles Jensen, he adamantly refused to address this (or any other subject), saying only "A landlord doesn't have to have or state a reason for eviction." (CR-1361)

Defendants' December 7, 2007 Transcript Supplement continues re discovery:

> Moreover, Charles Jensen completely and permanently severed all communication with Defendants after this April 12, 2007 conversation, thereby precluding compliance with this essential ingredient for any motion to compel discovery in CCP Sec 2016.040: "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented in the motion." (CR-1361-1362)

G. Discovery (form inquiries, trial date reset)

65-66. The opinion states (3:8): "There was no evasion of discovery. Appellants never served any discovery requests."

Plaintiff's attorney Charles Jensen was the very antithesis of the sort of member of the Bar prescribed by Business & Professions Code § 6068(d) who "shall employ, for the purpose of maintaining the causes confided to the member such means only as are consistent with truth." With respect to discovery, Charles Jensen acted as if he had never heard of California Attorney Guidelines of Civility and Professionalism (calbar.ca.gov.) which says.

> #9: Attorneys are encouraged to meet and confer early in order to explore voluntary disclosure, which includes identification of issues, identification of persons with knowledge of such issues, and exchange of documents.

> *Townsend v Superior Court* (1998) 61 Cal.App. 4th 1431, 1435 notes: "The Discovery Act requires that, prior to the initiation of a motion to compel, the moving party declare that he or she has made a serious attempt to obtain 'an informal resolution of each issue.'" *Obregon v Superior Court* (1998) 67 Cal.App.4th 424, 434 observes:

> As *Townsend* notes, it is a 'central precept' of the Civil Discovery Act of 1986 that discovery

"be essentially self-executing." (61 Cal.App.4th at 1434.) Thus reasonable and good faith efforts at informal resolution of discovery disputes are no doubt a key part of the discovery system. It is also a central precept of the discovery system, however, that "[i]n order to accomplish the various legislative purposes [of the discovery law], the several statutes must be construed liberally in favor or disclosure. . ." *Greyhound Corp. v Superior Court* (1961) 56 Cal 2d 355, 377; *Emerson Electric v Superior Court* (1997) 16 Cal 4th 1101, 1108.

Greyhound Corp. v Superior Court (1961) 56 Cal 2d 355, 376 observes: "Certainly, it can be said, that the Legislature intended to take the 'game' element out of trial preparation while yet retaining the adversary nature of the trial itself. One of the principal purposes of discovery was to do away 'with the sporting theory of litigation – namely, surprise at the trial.' (*Chronicle Pub. Co. v Superior Court* (1960) 54 Cal 2d 548, 561.)" (Mandamus Update at 10.)

67-69. The opinion states (3:10-11): "At the beginning of trial, Appellants orally moved for a continuance to reopen discovery. The motion was denied."

To preclude Defendants' discovery, file tampering followed service fraud:

Defendant's July 19, 2007 Affidavit re Plaintiff's Misrepresented Filings says:

> On June 11, 2007 both Defendant Mike Halliwell and the window clerk in room 107J inspected the Case File, and determined that the ONLY documents in the file from Plaintiff were the Summons and Complaint filed June 1, 2007. Defendant both served on Mr. Jensen and filed a **Complete Listing of Documents in File except Defendants' filings** (as of June 11, 2007 at approximately 10:00 AM); and the accuracy of this listing was NEVER challenged by Plaintiff's counsel in subsequent proceedings. (Notable in their absence were Plaintiff's Proofs of Service and Form UD-150 that later turned up in the file Stamped as Filed on JUN 6 2007.) (CR-250:15-22)
>
> Leaving aside the serious matter of how Mr. Jensen's BRIGHT BLUE form UD-150 could have been overlooked in the Case File on June 11, 2007 (when Defendant Mike Halliwell had a deputy clerk photocopy all fourteen pages in the file not submitted by Defendants, and initial "C.O." to verify that there were only these fourteen pages not submitted by Defendants, and so attested in his affidavit of that date), the fact remains that **form UD-150 and every applicable precedent contemplates that the other side will have up to five days to submit a Counter-Request BEFORE any decision is made setting the case for trial.**

Fraudulent service combined with file tampering left Defendants helpless:

Defendant's June 17, 2007 Affidavit cites Plaintiff's tactics to block discovery:

> **It would be difficult to imagine a case where the right (in mandatory Form UD-150) to make a COUNTER-REQUEST relating to the setting of a trial date is more important than in MCV 191306 as handled by Plaintiff's attorney Charles Jensen. Surprise, Surprise! This document is also missing from the case file (see Complete Listing of Documents in File – except Defendants' filings, as of June 11, 2007 at approximately 10:00 AM) ... Defendant should have some input relating to jury-nonjury, estimated length of time the trial will take, and dates of non-availability and reasons therefore – before a suggestion based on *minimizing* the opposing party's opportunity to prepare, is placed on the calendar.**
>
> **On Friday afternoon June 8, 2007 an *Order & Notice of Trial Unlawful Detainer* in CHRY-SANTHE E. PAXINOS vs. MICHAEL J. HALLIWELL, ET AL arrived at Defendants' address (postmarked June 7, 2007). This Notice said a trial had been set for June 19, 2007 at 8:30 AM. If somehow Michael J Halliwell reacted with lightning speed and got off an interrogatory seeking the name of the anonymous complainer mentioned in the February 20, 2007 Notice of a March 26, 2007 hearing attached to Plaintiff's**

> **March 30, 2007 Complaint, it would have arrived in Monday's (June 11, 2007) mail at Mr. Charles Jensen's office. He might have waited until his response deadline on June 16, 2007 and not answered at all (since discovery closed on June 14, 2007). He might have said he didn't know, or he might have actually supplied the name of the person who complained about Mr. Parker's "threatening behavior." It wouldn't have made any difference as it was too late for any follow-up. (CR 74-75)**

70-71. The opinion states (3:11-12): "Appellants fail to demonstrate that the trial court abused its discretion in denying the continuance or denying a request to reopen discovery."

Defendant's July 22, 2007 Affidavit re Misconduct of Plaintiff's Counsel says:

> There is no such thing as a legitimate "sneak attack" in the law, and the spirit embodied in CCP Sec. 2033.220(a) should be reflected in discovery and every other aspect of presenting the facts of a case: "Each answer in response to requests for admission shall be as complete and straightforward as the information available to the responding party permits." The California Judicial Council (under the mandate of CCP Sec. 2033.710 in developing UD-106) has sought to make sure that a landlord's "hidden intentions" do not remain so, with Form Interrogatory 77.1 which says: "State all reasons that the **NOTICE TO**

QUIT was served or that defendant's tenancy was not renewed and for each reason [details omitted]. Form Interrogatory 71.7 says: "Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or **PROPERTY** caused by the defendant or other occupant of the **RENTAL UNIT** or their guests? If so, for each report state [details omitted].

Charles Jensen asserts with respect to Defendants: "They do not however state why they delayed in serving their requests. They only make hearsay accusations that counsel evaded them. All they had to do was serve the request." (Reply Brief at 5) This does not square with this aspect of Defendants' search for the results of the March 28, 2007 Hearing described in Defendants' Consolidated Brief "It involved giving Defendants' 'Request to Bar Surprise Evidence (CR-106) which mostly consisted of Form Interrogatories 71.7 and 77.1 (CI: 0180), directly to Kadin Blonski while the parties waited for Judge Nadler's decision on restoration of their right to a jury trial; when Mr. Blonski passed this proposed evidence sanction to Charles Jensen, he tersely remarked, 'This isn't the law.'" (4:23-25). This is indeed hearsay, but Charles Jensen does not contest the reliability of it, and it is certainly more reliable than the anonymously compiled second- and third-hand complaints in Plaintiff's Exhibit #5 (CR-144)

In *Fairmont Insurance Co. v Superior Court* (2000) 22 Cal 4th 245, 251, the California Supreme Court speaks approvingly of the resetting of the discovery time clock endorsed in *Beverly Hospital v Superior Court* (1993) 19 Cal.App.4th 1289, 1293: "It is also consistent with the legislative history of the provision and the Civil Discovery Act of 1986 of which it is part, which indicate that the purpose of the statute was to eliminate a source of discovery abuse and unnecessary trial delays caused by parties seeking continuances or postponements of trial for the sole purpose of extending the time for discovery." There is nothing more certain in the case at bar than that Charles Jensen's no-notice June 19, 2007 challenge to Defendants' right to a jury trial was NOT motivated "for the sole purpose of extending the time for discovery." [Appeal Briefing at CR-1491 to 1492]

H. Anonymous Hearsay (Plaintiff's Exhibit)

72. The opinion states (3:14): "At trial" [Defendants made their first effort to exclude the letter from the Homeowners' Association which became Exhibit 5]

Defendants started off by trying to secure transcription of proceedings before Judge Nadler to protect against inconsistencies in the way Plaintiff's case was presented (June 25, 2007 Transcript at 177:7-13). Defendant Michael Halliwell said to Judge Rushing: "If Your Honor explicitly rules we're not entitled to it, let that be in the record, because testimony under oath is generally allowed as

impeachment." (Ibid. at 177:4-6) Judge Rushing refused to take a position on this issue, saying: "I'm making no rulings whatsoever with regard to transcripts." (Ibid. at 177:17-18). Defendants were concerned about a batch of 23 letters, referred to in a "mini-trial" conducted by Judge Nadler, and wanted to make sure that their use not be extended beyond showing that they contained nothing about when Denis Howard moved out (in the first year of James Parker's residency). (See Nadler June 19, 2007 Transcript at 43:22-28.) Defendants were not concerned about their inability to rebut any specific charge made by a known individual, only about being overloaded with too much material to cope with.

73. The opinion states (3:14): [As part of a group of 24 letters] "Plaintiff introduced 'Exhibit 5'"

Before Charles Jensen brought forth the same letters he had referred to (but never introduced into evidence) in proceedings before Judge Nadler, the prior proceedings were brushed aside by Judge Rushing who said: "I'm just trying this case." (See June 25, 2007 Transcript at 154:2-4.) Defendant Halliwell agreed not to address controversial evidentiary matters in his opening statement: "I have no objection whatever to deferring anything that I might say to closing after the appropriate evidence has been, supporting evidence has already been introduced." (Ibid. at 155:20-23)

However, Defendant Halliwell tried to establish his right to fully inspect relevant evidence: "It's very much in dispute between the two of us what's actually in it, and we would like an opportunity to

actually see it." (Ibid. at 156:5-7) Judge Rushing ruled that Defendants would eventually get copies of whatever evidence they were concerned about, but said: "There is a procedure for having copies made out of a Court file. I actually, believe it or not, I don't know exactly what those procedures are." (Ibid. at 157:15-17) Defendant Michael Halliwell continued his quest: "[These are] relevant, I should say, to how we conduct our defense, and therefore we do in fact need the copies of the documents, since I am seeing them only for the very first time, before we can proceed with our case. It won't take very long to do the Xeroxing." (Ibid. at 158:3-7)

Judge Rushing seemed never to have quite enough time to allow Defendants adequate opportunity to prepare, for which she offered this explanation: "There is a statutory right for very short time frames in unlawful detainer actions." (Ibid. at 159:19-20) After Charles Jensen supported Judge Rushing on this point, Defendant Halliwell replied: "I believe he referred, and Your Honor referred to Civil Procedure Code 1179(a), which does no more than establish unlawful detainer over other cases. It in no way implies that an unlawful detainer case itself should proceed more rapidly than justice requires." (Ibid. at 161:7-11) However, Judge Rushing cut short Defendant's plea, saying: "If this is a motion for continuance, the motion is officially denied, and so I'd like to move on to jury selection issues." (Ibid. at 161:23-25)

74. The opinion states (3:14): [Exhibit 5 was] "(a letter from the Homeowners' Association)."

The letter from the Homeowners' Association was only a page long, but Defendants were not alert enough to notice that it was stapled to a March 26, 2007 "Report" (that had been alluded to in Plaintiff's March 28, 2007 60-Day Notice to Quit, and which Defendants had been seeking ever since). Earlier in pretrial proceedings, Judge Rushing had slammed the door on Defendants efforts to learn the contents of this Report (via their Form Interrogatories 71.7 & 77.1, which they had served on Charles Jensen on June 21, 2007). Thus Judge Rushing ruled: "As I said, unlawful detainer matters are different – Mr. Jensen pointed that out, too – than most other civil litigation, and so I'm going to deny the motion to re-open discovery, and let us move on to jury selection." (June 25, 2007 Transcript at 162:27 to 163:2)

There was one final opportunity to focus Judge Rushing's attention on Defendants' right to know the nature of the charges against them (which were certain to have been addressed in the March 26, 2007 "Report"). Charles Jensen said to Judge Rushing: "Your Honor, before we begin, my – the parties – may we do a sidebar on a procedural matter? It will make a difference in time." Judge Rushing replied: "Yes." Charles Jensen called over Defendant to participate in an unrecorded (Conference at the Bench). (June 25, 2007 Transcript at 198:2-7)

Defendants were not successful in changing Judge Rushing's unwillingness to protect what they viewed as their evidentiary rights, but she seemed to have second thoughts about keeping our efforts out of the record, when she made this offer the next day: "We are going to stay on the record to permit the parties

to place on the record anything that was said at sidebar that wasn't argued on the record." (June 26, 2007 Transcript at 442:8-10) Defendant made the handling of Exhibit 5 the first issue he raised, although he could not remember its number: "I had a motion to strike the March 28th letter with the redactions in it that – I'm not sure of the exhibit number. March 28th should identify it clearly enough. On the grounds that it was improper due to the anonymous nature of the complaint and other procedural reasons." (Ibid. at 442:23-28 Judge Rushing addressed every OTHER issue raised by either side, but then backed off from trying to justify her handling of Exhibit 5. She simply wound up the discussion by saying: "I'm not making any further rulings than that. We are going to be in adjournment." (Ibid. at 447:18-20)

75-76. The opinion states (3:14-15): [Aside from Appellants' protest that they needed more than 30 minutes to study a pile of 24 letters dumped on their desk by Plaintiff] "No objection was made to its admission into evidence and the trial court admitted it into evidence."

Charles Jensen confirms that when Defendants asked for time to study Exhibits #2-5 plus 24 letters in Exhibit #6: *"They were given 30 minutes at the time of the request."* (R7:22) His Reply Brief does not contest these observations in Appellants' Opening Brief (1A19:5-11):

> After having studied Charles Jensen's document dump, Defendants prepared some evidentiary motions which they tried to pre-

> sent to Judge Rushing's judicial assistant (and opposing counsel) at the start of proceedings the next day. However, Defendants were told that they would have to present their motions in the courtroom at the start of proceedings. Instead, when proceedings started Judge Rushing said: "I want to bring in the jury. I don't want to waste any time." (Transcript at 316:3-4).

Charles Jensen's Reply also does not dispute these Opening Brief statements:

> Judge Rushing explained her refusal to rule on Defendants' exclusionary motion:
>
> Normally – let me just explain something. We're in the middle of a jury trial. I never have jurors outside waiting. This is not the time to do this. That's not what we do to jurors. I never keep jurors waiting. I don't care what anyone wants to file, and I don't know that these are fileable, in proper form or whatever, but I'm just telling you right now, once a jury trial started – you wanted the jury, you have got them. They are out there. I'm not keeping them waiting. We're going to put on the case. If there's a break, we can let them go later, and I can consider some papers if you would like. (Transcript at 316:23 to 317:5) (1A 19:25 to 20:5) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 19)

77-79. The opinion states (3:15-16): "Later [actually

before Exhibit 5 was ever used in the case, Defendants offered their motion to exclude surprise evidence] Appellants made a motion to strike 'Exhibit 5' as an anonymous letter [with ALL the names of complainers redacted], claiming it was hearsay."

Charles Jensen also does not deny that this exchange took place (while James Parker was on the witness stand) when Exhibit #5 was used for the very first time at trial. Because Defendant's were not allowed to use their own Exhibit numbering system (A-1, A-2, B-1, B-2, etc to indicate the topic to which an exhibit related, there was a bit of confusion at the start. Michael Halliwell said: "If I could just look at the date on the darn thing, I would have no problem reconciling that system with our system." Charles Jensen had organized his Exhibits by date, and so had no trouble determining that "it's dated 28 March, '07," (Transcript at 343:16-20) Michael Halliwell borrowed the Exhibit from James Parker, looked at it and said: "All right. That is what we need the sidebar on, Your Honor." However, Charles Jensen tried to keep Michael Halliwell from looking at the document in question, saying: "Your Honor, the evidence belongs with the witness." (Transcript at 343:21-26) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 19)

The Opinion of March 6 (3:14-16) shifts focus (again probably not directly examining the Exhibit itself) from the author of the charges contained in Exhibit #5, to the conveyance of these charges to the landlord by the Homeowners' Association. Defendants' March 20, 2008 Motion for Reconsideration points out: "There is no source information on this listing of

complaints other than 'This was submitted by a neighbor against tenant @ 1041 Copeland Creek Drive.' (CR-144)" (Id. at 63:16-18) [Jensen defends Exhibit 5] without suggesting who wrote the charges and compiled them (which would have been necessary to make them non-anonymous) or who vouched for them in open court (which was necessary to make them non-hearsay). (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 17-18)

80-81. The opinion states (3:17): "The letter [to which an anonymous compilation of hearsay complaints was attached as a second page] was admitted into evidence without objection. Appellants waived any claim on appeal."

Defendants' March 20, 2008 Motion for Reconsideration quotes Form Interrogatory 71.7 (asking for specifics related to "Has any **PERSON** ever reported any nuisance or disturbance at or destruction of the **RENTAL UNIT** or **PROPERTY** caused by the defendant or other occupant of the **RENTAL UNIT** or their guests?") and notes:

> Charles Jensen seeks to somehow create an impression that (at some point in the proceedings) Defendants did not object to what became Exhibit #5 over their long-running and vehement objections. Charles Jensen does not try to deny that the Homeowners' Association report in question was completely WITHIN the ambit of Form Interrogatories 71.7 & 77.1 and thereby the target (1A13:22) of Defendants' "Request to Bar Surprise Evidence" (CR-106). Charles Jensen does not

> dispute that (1A13:24 to 14:1): "Although Judge Rushing denied this Motion in Limine, she DID place it in the Case File, as her Courtroom Minutes of June 26, 2007 note (CR-324)." (Id. at 61:6-13)
>
> Even if Defendants had not been battling for the better part of two months to keep the Homeowner's Association report (which we had no access to but was alluded to in Plaintiff's opening complaint) from coming into evidence (without the detailed source information which is required by Form Interrogatories 71.7 & 77.1), its introduction into evidence as part of a 27 page "document dump" which Defendants had only 30 minutes to inspect (see Judge Rushing's Courtroom Minutes excerpt at CR-323:25 to CR-324:3) would NOT have been a valid basis for precluding a later hearsay challenge. Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 18)

82-84. The opinion states (3:18-19): "Furthermore, Appellants have not shown that the trial court erred in denying, subsequent to the letter's admission into evidence, their [renewed] motion to strike it."

In re Michael G. (1993) 19 Cal.App.4th 1674, 1677 says of hearsay exclusion:

> Evidence Code section 1200 provides, in pertinent part: "(a) 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at a hearing and that

> is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible."
>
> The purpose of the "hearsay rule" is to preserve a party's Sixth Amendment right to confront and cross-examine an adverse witness and to disallow testimony coming from a witness who is not under oath and whose demeanor cannot be observed by the trier of fact. (1 Witkin, Cal. Evidence (3d ed. 1986) The Hearsay Rule, sec. 558, p. 533.) Like most general propositions, the hearsay rule has its exceptions, most of which are codified in the Evidence Code commencing at section 1220. The reasoning behind such exceptions is that experience has shown that there are situations where it is impossible or impractical to present an actual witness, yet the proffered necessary evidence is inherently trustworthy under the circumstances. (5 Wigmore, Evidence (Chadbourn rev. 1974) sec. 1420, p 251; McCormick on Evidence (3d ed. 1984) sec. 253, p. 753.)

United States v Sanchez-Lima (1998) 161 F.3d 545 says of Federal evidence:

> Hearsay evidence sought to be admitted under Rule 807 must have circumstantial guarantees of trust-worthiness equivalent to the listed exceptions to the hearsay rule. See United States v Fowlie, 24 F.3d 1059, 1069 (9th Cir. 1994). Furthermore, the statement must (1) be evidence of a material fact; (2) be

> more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (3) serve the general purposes of the Rules of evidence and the interests of justice by its admission into evidence. Fed.R. Evid. 807. (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 20-21)

85-86. The opinion states (3:20-21): "Additionally, assuming arguendo some error occurred, Defendant fails to demonstrate why a reversal of the judgment is required" [when a tenant is evicted on account of Star Chamber proceedings by a Homeowners' Association].

Defendants' March 20, 2008 motion for reconsideration replies to this point:

> From the perspective of Defendant Parker's right to confront his accusers and to cross-examine them, those who made the complaints in Exhibit #5 were totally anonymous. Nor is there the slightest doubt that these complaints are second and third hand hearsay, as any judge who looks at them can plainly see. The "neighbor" who compiled these complaints about "Resident 1041" on the "WeekEnd of 2/17, 18/2007" does not refer to himself or herself in any fashion whatsoever. The devastating impact of this compilation of complaints is obvious, and Charles Jensen acknowledges its decisive nature. After Judge Rushing ruled against Defendants' motion to exclude this document, Charles Jensen recalled his client

Gus Paxinos to the stand and this exchange ensued:

> Q. Did you read the allegations of the seven or eight different residents?
>
> A. Yes.
>
> Q. In terms of what they allege Mr. Parker or somebody in 1041 did?
>
> A. Yes.
>
> Q. Did that bother you? Did it bother you?
>
> A. Well, of course.
>
> Q. What, if anything, did you do then?
>
> A. I called you, and I brought this to your attention.
>
> Q. Was it the following day on the 30th that you served the 60- day notice?
>
> A. Yes.
>
> Q. Was there any other reason that you served the 60-day notice other than what's in that letter?
>
> A. No. (June 26, 2007 Transcript at 378:3-18) (Id. at 64:12 to 65:10) (Defendants' Petition to Review

(S163276) re March 6, 2008 Decision at 21-22)

I. Faulty Instructions (discrimination/reprisal)

87. The opinion states (3:23-24): "Appellants fail to demonstrate any error in failing to instruct the jury on the Unruh Act discrimination claim."

In re Cox (1970) 3 Cal 3d 205, 216 ruled that the categories in the Unruh Act were "illustrative rather than restrictive" and (about when the Legislature, in adopting AB 1400, codified what had previously been only dicta in *Marina v Wolfson*) the California Supreme Court noted in *Koebke v Bernardo Heights Country Club* (2005) 36 Cal 4th 824, 839-840: "We also concluded that in enacting the Unruh Act, the Legislature intended to ban all forms of arbitrary discrimination in public accommodations."

Charles Jensen tries to pretend that the jury was allowed to determine whether there had been arbitrary discrimination in the landlord's decision to evict, saying in his Reply Brief: *"It is true that Marina v Wolfson (1982) 30 Cal 3d 721, 730 does protect persons from arbitrary discrimination. Appellants just refuse to accept there was nothing arbitrary in evicting them."* (R8:18-20) This assertion ignores Judge Rushing's actual rulings noted in Appellants' Opening Brief (1A26:4-21):

> Judge Rushing completely refused to include anything about anti-discrimination law in her jury instructions, in spite of Defendants' bolstering *Shelley v Kraemer* (1948) and

Mulkey v Reitman (1966) with the clearly controlling *Marina Point v Wolfson* (1982) precedent and its legislative enactment by AB 1400 (effective January 1, 2006) in their proposed jury instructions (CR-094). Moreover, near the end of jury deliberations (at 4:30 pm according to Courtroom Minutes of June 26, 2007, at CR-324), Judge Rushing added a devastating modification to jury instructions which seems to have assumed that California contract law took precedence over its (and Federal) protections against arbitrary discrimination. Judge Rushing said: "I have taken a jury instruction from the approved jury instructions number 313, modification of contract, and tried to fit it to the facts of this case." (Transcript at 454: 15-18). Defendant Halliwell said he agreed with "everything except the last sentence." (Ibid. at 455:3-4) Judge Rushing responded: "But that's a statement of law." AND "They cannot consider a party's hidden intentions." (Ibid. at 455:5-9) But "hidden intentions" is what invidious discrimination is all about (hardly anyone admits to any kind of prejudice), so Defendant Halliwell asked that language be added to make clear that the landlord had to have a valid reason for evicting him (which he had requested previously in response to a jury question about forty minutes earlier). Judge Rushing responded: "I'm not going to go through that again, sir." (Transcript at 455:24-27)

Defendants' January 24, 2008 Appeal Transcript Appendix states (5:5-14):

Michael Halliwell continued to summarize dispositive issues in the case: "The second possible way of disposing of the case on narrow grounds is on jury instructions. The Judge did not allow us to do any-thing at all with the Unruh Civil Rights Act. You can read the entire jury instructions, and not even realize that such an act exists. She [Judge Rushing] confined us to the retaliatory eviction protections under [CC Sec.] 1942.5, but she threw out most of our evidence because it was too recent; because she simply construed the window as being six months [prior to the 60-Day Notice]. That's incorrect. I believe six months is the period where there is a burden of proof on the landlord, but there's no [time] limitation at all as to what is considered acceptable evidence of retaliatory motive. It simply is shifting the burden [of proof]. But most of our case was thrown out because it was too recent, [there are] explicit rulings in the court transcripts where they [Plaintiff's attorney supported by Judge Rushing] said, well, if it didn't happen – if it happened after March 28th 2007, I'm not interested. It's not relevant. So most of our case was thrown out there. Our entire Unruh Act [defense] was thrown out, and most of the retaliatory eviction evidence was thrown out. So there we have another narrow way of deciding the case. We were never allowed to present ours." (Transcript at 6:17 to 7:9)

88. The opinion states (3:24): "There was no evidence

of discrimination in violation of the Unruh Act."

Defendants' December 7, 2007 Transcript Supplement analyzes trial rulings:

> Michael Halliwell asked James Parker if he recalled writing [this on January 4, 2007]:
>
> Finally, Gus please provide me the names of those Board members who attended this quote "special meeting" unquote, as I believe there are a couple of members who may have personal axes of their own making to grind with me and are attempting to use their offices as board members to protect and maintain their own personal agendas by retaliating against me through you. With this information, I will not only be forewarned about who bears me ill will but forearmed as to how to prevent it, as well. (Transcript at 321:12-23)
>
> After James Parker said he "absolutely" recalled writing this, Michael Halliwell asked, "Did you receive any response to that?" (Transcript at 321:24-26) James Parker replied: "I received nothing from the homeowners or Gus Paxinos." (Transcript at 321:27-28) (CR-1397)

Defendants' December 7, 2007 Transcript Excerpt Supplement analyzes trial rulings:

> Michael Halliwell then quoted from the February 4, 2007 letter (sent with the rent check):
>
> I have not heard back from you about

> attending an upcoming Homeowners' Association meeting with me to clear the air about recent events I referred to in last month's rent check letter, as well as set some standards with the Board about ways to establish the true legitimacy and credibility of any future situation they may claim has occurred. (Transcript at 322:3-10)
>
> Michael Halliwell asked: "Do you recall writing that?" (Transcript at 322:11) James Parker answered: "Yes, I do." (Transcript at 322:12) Michael Halliwell asked: "Did you receive any response." (Transcript at 322:13) James Parker answered and explained: "I did not. It was just a reminder to Gus of what I had previously asked him in the preceding letter, the last rent check letter. To go with me to a homeowners' meeting because I can't go unless I'm invited by the homeowner. (Transcript at 322:14-17) (CR-1397-1398)

Defendants' December 7, 2007 Transcript Supplement analyzes trial rulings:

> Michael Halliwell asked James Parker if he recalled writing this in his February 4th letter: "Please let me know when you would be able to attend, and I'll be there." (Transcript at 322:22-24) James Parker answered, "Yes." (Transcript at 322:25) Michael Halliwell then asked, "Did he ever offer to accompany you to a homeowners' association meeting?" (Transcript at 322:26-27) James Parker replied, "Never." (Transcript at 322:28) (CR-1398)

Defendants' November 13, 2007 Analysis of Judge Nadler's Proceedings says:

> In recent settlement negotiations (conducted under the cloud of Judge Nadler's expressed intention to deny a jury trial) in separate mediation by the Court's mediation service and also in Gary Nadler's intervention in his non-judicial capacity (as an experienced expert in Unlawful Detainer cases) it become unequivocally clear that during whatever time James Parker and Mike Halliwell would be allowed to remain at 1041 Copeland Creek Drive, they would not be allowed to appear at Homeowners Association proceedings to give their side in any disputes. THIS IS TANTAMOUNT TO HANGING A SIGN ON THE PROPERTY WHOSE OCCUPANCY IS IN DISPUTE SAYING, "**THIS IS A BILL-OF-RIGHTS-FREE ZONE; ANY TENANT SEEKING TO ASSERT HIS CONSTITUTIONAL RIGHTS HERE REMAINS AT THE PLEASURE OF, AND MAY BE EVICTED AT THE DISPLEASURE OF THE MANAGEMENT.**" (CR-102:20 to CR-103:14) (CR-1140)

89-90. The opinion states (3:24-26): "The trial court allowed defendant to argue retaliatory eviction and provided the jury with instructions regarding the defense of retaliatory eviction."

Charles Jensen completely undermined his position on retaliatory eviction. By abandoning his effort to

show ANY cause, Plaintiff became subject to enhanced vulnerability under *Western Land Office, Inc. v Cervantes* (1985) 175 Cal.App.3d 724, 741: "If the landlord takes action for a **valid** reason not listed in the unlawful detainer statutes, **he must give notice to the tenant of the ground upon which he proceeds,** and if the tenant controverts that ground, the landlord has the burden of proving its existence by a preponderance of the evidence." (quoted in Defendants' Reply Brief at CR-1518). Forcing a tenant to give up his Sixth Amendment rights to know the charges against him and to confront his accusers, is certainly NOT a valid reason, and is probably why Judge Rushing threatened Defendant Halliwell with a contempt of court sanction for protesting her ruling that the Sixth Amendment was irrelevant. Also Charles Jensen stops short in his quotation of Civil Code Sec 1942.5(a) just after listing "has given notice" as triggering a six month burden of proof obligation, while leaving out two other crucial benchmarks. Thus Defendants' Reply continues (at CR-1519):

> Charles Jensen realizes that 180 days before his seeking to recover possession of 1041 Copeland Creek Drive in an unlawful detainer action or proceeding (on June 1, 2007) is a viable "evidence window" and so is the 180 days before his causing the lessee to quit involuntarily (on July 5, 2007). In other words, Plaintiff's attorney knows that all of the evidence excluded by Judge Rushing because it was "too recent" should have been allowed to be introduced.

Judge Rushing ruled that the jury could not consider whatever role was played by Mr. Paxinos in post-notice concealment of the nature of complaints against James Parker. She said: "Well, his actions taken since the notice are irrelevant." (Transcript at 278:28 to 279:1).

In a later fees motion Charles Jensen seeks to punish Defendants for voicing legitimate objections like this, by asking to be paid $160 for reading another brief by Defendants, which analyzes Sec 1942.5(a) (at CR-1205 to CR-1206):

> #3 issue notice of termination (the only benchmark Judge Rushing would allow, thereby computing an evidentiary window from October 2, 2006 to March 28, 2007); #4 bringing an action to recover possession (which took place on June 1, 2007, thereby making evidence that going to court was a retaliatory device, subject to a landlord's burden of proof from December 3, 2006 to June 1, 2007); and #5 cause the lessee (renter) to quit involuntarily (the actual eviction was a separate act and the landlord's securing a Writ of Possession on June 27, 2007 triggers its own evidentiary burden-of-proof window from December 27, 2007 to June 27, 2007. Thus Judge Rushing's refusal to allow evidence of improper motivation during the 60-Day notice period vitiated benchmark #4 in CC 1942.5, and her refusal to allow consideration of Charles Jensen's evasiveness during pre-trial proceedings vitiated benchmark #5. Moreover, in exchange for having no time limit, subdivision (c) shifts

the burden of proof, which is on the lessor (landlord) during the six-month time period covered by subdivision (a): "In an action brought by or against the lessee pursuant to this subdivision, the lessee shall bear the burden of producing evidence that the lessor's conduct was, in fact retaliatory." THERE IS NO SUCH THING AS INADMISSIBLE (BECAUSE OF ITS UNTIMELINESS) EVIDENCE, THAT A LESSEE CANNOT USE TO SATISFY HIS BURDEN OF PROOF UNDER SUBDIVISION (C). (5/27/08 Notice of Appeal at 113:6-16)

Thus *Drouet v Superior Court (Broustis)* (2003) 31 Cal.App.4th 583, 592 notes: "In 1979, the Legislature repealed section 1942.5 and reenacted it with provisions that extended the time period during which a tenant is protected from retaliatory eviction and then enlarged the prohibited forms of retaliation. (Stats. 1979, ch. 652 sec 2 p. 2005; *Barela v Superior Court* (1981) 30 Cal 3d 244, 250.)"

Drouet v Superior Court (2003) 31 Cal.App.4th 583, 592 further notes: "It shall be unlawful for a lessor to increase rent, decrease services, cause a lessee to quit involuntarily, bring action to recover possession, or threaten to do any such acts, for purposes of retaliating against the lessee because he or she has . . . lawfully and peaceably exercised any rights under the law. CC Sec 1942.5(c).

91. The opinion states (3:26): "The jury rejected the retaliatory eviction defense."

Obviously a jury cannot reject a defense which a Defendant is not allowed to assert, or consider evidence of violation of a truncated version of Civil Code 1942.5, that Defendants are coerced into leaving out of their case. It must happen often that a judge gives more credibility to what she is told by a lawyer, than by self represented litigants. However, it should never happen that the non-lawyers don't even get a chance to make their case for proper jury instructions, because their preparation time "has come and gone" (Transcript at 169:22-23) due to repeated wrongful attacks on their right to a jury, by a lawyer who certainly knows better.

92. The opinion states (3:26-27): "The trial court did not block admissible evidence."

Appellants' Opening Brief discusses Judge Rushing's handling of Exhibit #5:

> After rejecting Defendants' motion to strike Plaintiff's anonymous compilation of hearsay complaints, Judge Rushing curtailed their right to discuss in detail the alleged defects of this Report. Michael Halliwell was eliciting testimony on this page of complaints from James Parker when he said: "Moving on to number B (of the second complainer being discussed)" (Transcript at 367:10). This was the second specific charge made by the last redacted name in the document (it is not clear how many different individuals were involved,

> four of the felt-tip cross-outs were of names of exactly the same length). At this point 16 lines of the 39 lines (CR-144) setting forth various complaints had been covered, the remaining 23 lines included ALL of the complaints made by persons whose locations were specified (CR-145) on an accompanying map. (CR-1336)

Defendants' December 7, 2007 Transcript Excerpts cites Exhibit #5 rulings:

> Judge Rushing interrupted James Parker's discussion of Exhibit #5 (Transcript at 355:17-18) and Michael Halliwell protested: "I want to go through the evidence." (Ibid. at 355:19) Judge Rushing responded: "Actually, sir, I have the right to control the means and manner, and also there's an Evidence Code section called 352 which prevents repetition and cumulative evidence and things that are more time consuming than probative. The jury is only here for a limited time. We need to get through the rest of this case." (Ibid. at 355:20-26) Michael Halliwell responded: "Considering the critical nature of this document, I'd like to be able to go through it line by line. Are you ruling that out? (Ibid. at 355:27 to 356:1) Judge Rushing answered: "I am." (Ibid. at 356:2) (CR-1421)

Appellants' Opening Brief protests Judge Rushing's handling of Exhibit #5:

> Michael Halliwell explained his purpose: "I'm trying to tie together." (Transcript at 367:20) He continued to note the importance of a clear picture based on as much evidence as possible, but Judge Rushing insisted: "In the interests of time, I'm going – you can ask one more question on this, then we're moving on." (Ibid. at 367:25-26) (CR-1337)

Defendants' December 7, 2007 Transcript Excerpts says of Exhibit #5 rulings:

> In fact, all of the names found in this compilation of complaints were redacted. By preparing a map showing the location of complainers who were not named and REDACTED, Charles Jensen was attempting to counteract the appearance of anonymity, yet not allow the Defendants time enough to make any actual identifications. However, by the time Defendants were about to start with the map-location identified complainers, Judge Rushing pulled the rug out from under Defendants [with her invocation of Evidence Code Sec 352]. (Transcript at 367:25-26) (CR-1411)

Defendants' December 7, 2007 Transcript Supplement analyzes trial rulings:

> Michael Halliwell tried to ask James Parker whether "there was any avenue whatsoever for you to get your side of this [complaint] into the hands of the Homeowner's Association before they made their decision on this matter?" (Transcript at 285:4-7) Charles

> Jensen prevented James Parker from answering by intervening: "Objection, Your Honor. Relevance." (Transcript at 285:8) Judge Rushing ruled: "I'm going to sustain the objection." (Transcript at 285:9) (CR-1388)

Appellants' Opening Brief cites Plaintiff's praise of flouting Evidence rules:

> In "making a record" at the end of proceedings, Charles Jensen congratulates Judge Rushing for her various evidentiary rulings, (especially letting in the (CR-144) redaction scarred anonymous compilation of hearsay complaints which Defendants tried to keep out with their Request to Bar Surprise Evidence). He said: "The Evidence Code sets forth what your parameters are. You haven't violated any of them." (Transcript at 444:15-16) Defendants cited these parameters (CR-362) in support of their position:
>
> > California Evidence Code Sec 1200: (a) "'Hearsay evidence' is evidence of a statement that was made by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. (b) Except as provided by law, hearsay evidence is inadmissible."
> >
> > *Concise Encyclopedia*: "The creation of a body of rules for the exclusion of hearsay evidence was motivated by arguments that such testimony could tend to mislead the jury, that the hearsay

> observer, unlike the legal witness, was not under solemn oath and was inaccessible to cross-examination, and that such testimony furnished third-hand evidence, and that it violated the best evidence rule (the rule that the best version possible of a written document be submitted as evidence)." (CR-1335 to CR-1336)

93. The opinion states (3:27): [The trial court] "did not fail to give proper jury instructions."

Defendants' December 7, 2007 Transcript Excerpts analyze trial rulings:

> Judge Rushing did not appear to be much concerned about such principles [prohibitions in Evidence Code Sec 1200 against hearsay], since she responded to Michael Halliwell's invocation of the Sixth Amendment (which mandates every court in this nation to respect these fundamental rules of evidence) by ruling: "It is irrelevant." (Transcript at 351:18) In a government of laws, not men and women, respect for the Constitution must transcend respect for any judge determined to brush aside such considerations. Trial by Jury is a citadel that our Founding Fathers placed in our Constitution, precisely to provide a means of protecting the Rule of Law from the sort of judicial abuse that was so familiar to them. In an effort to appeal to the sense of fundamental fairness of jurors, Michael Halliwell said (in a tone of voice that left little doubt as

to whether he thought judicial prerogatives should take precedence over the Bill of Rights): "The Sixth Amendment is irrelevant. Fine" (Transcript at 351:19) Judge Rushing nipped in the bud any thoughts Michael Halliwell might have had of mentioning the California Evidence Code, with this response (Transcript at 351:20-25) to his allusion to the Bill of Rights: "You know what, Mr. Halliwell, I'm going to stop you from making those comments anymore in this courtroom. When I make a ruling that something is irrelevant, you don't comment to the jury that the Sixth Amendment is irrelevant, and I consider that contemptuous behavior. I won't tolerate it." (CR-1417)

J. Premature Fees Rulings (before transcript)

94. The opinion states (4:2-3): "(Appellants' arguments regarding attorney fees (post judgment) are contained in their 'Consolidated' brief.)"

The "briefing" cited by the Order of March 6, 2008 is reproduced below:

Also included on the page is the relevant portion of Respondent's Reply Brief. [This page, *infra*, from Appeal Briefing, covers categories I & J:]

I. Violation of Local Rule 2.2D and 5.5 A & B in Consideration of Attorney's Fees

Judge Rushing's order of August 28, 2007

violated her own instructions (CI: 1974) for the Fees Hearing that "There will be no Tentative Ruling. Mandatory appearances are required." This ruling was based on the faulty premise that James Parker had submitted no Opposition. (See James Parker's Noticed Filings Prior to August 28, 2007 Hearing at CI: 1240 to 1258.) Judge Rushing then tried to make a "fait accompli" of this false assertion by barring "any further filings of any sort" in her Order of September 5, 2007 (CI:2001).

J. Judge Rushing Strips Michael Halliwell of Standing with NO Legal Foundation

Judge Rushing had rejected an attack on Michael Halliwell's standing (which gave no supporting caselaw for this challenge) in granting his motion for a postponement of the original July 31, 2007 date for the Attorney's Fees Hearing. (See Michael Halliwell's Memorandum on Standing at CI: 1792 to 1809.) Michael Halliwell was immediately silenced at all proceedings, and not even allowed to address his right to standing. Judge Rushing allowed no opportunity for James Parker to prepare to defend alone against the $10,000 award of attorney's fees set forth in her vacated order of August 28, 2007 and reasserted this order without explanation in her Order of September 25, 2007 (CI: 2086).

I & J ATTORNEY'S FEES

> These assertions relate to a motion as to James Parker only. James Parker has never appealed the motion for attorney's fees. Halliwell only has filed this appeal of Motion for fees. He is neither attorney nor a party to that motion. Michael has no standing. Defendant Parker has no appeal.

95. The opinion states (4:4-5): "Respondent argues these assertions relate to a motion for attorneys fees that concerned only Defendant Parker."

Judge Rushing proclaimed the invalidity of a motion she had granted:

> On July 28th, in response to some papers that Mr. Halliwell had previously filed about his motion for attorney's fees, plaintiff's attorney Kadin Blonski filed a declaration in opposition to defendant's ex parte application in which he explained that Michael Halliwell has no standing to contest the motion for attorney's fees or to even request a continuance. (Transcript at 474:18-25)

Defendants answer Kadin Blonski's July 26, 2007 Affidavit:

> Blonski 7/26/07 Item #3: ***'Defendant MICHAEL HALLIWELL (hereinafter 'HALLIWELL') has no standing to contest the motion for attorney's fees and more importantly, has no standing to request a***

continuance of that motion." Defendant MICHAEL HALLIWELL explains why his conduct of *Paxinos v Halliwell and Parker* is inextricably bound up with the attorney's fees issue: "Plaintiff's co-counsel Kadin Blonski claims in his July 25, 2007 Declaration in Opposition to rescheduling the July 31, 2007 hearing on attorney's fees (CR-325) that Defendants' ex parte applicaton 'is improper and frivolous' because 'Defendant MICHAEL HALLIWELL has no standing to request a continuance of that motion.' In fact, nearly all of the compensation which Mr. Jensen is seeking (see his Exhibit 3 at CR-314) relates to motions where Mr. Halliwell had a direct personal stake in the outcome." (CR-419:13 to CR-421:9) (May 5, 2008 Supreme Court Appendix B at 17:5-15)

96. The opinion states (4:5): "Respondent argues that Mr. Parker never appealed the motion for attorney's fees."

Appellants protested Judge Rushing's unexplained $10,000 fees award:

Judge Rushing gave no further reasons, and simply asserted her authority as a judge:

> The Court is deeming the matter submitted at this time, is denying the request for a continuance for the reasons already stated and is ordering that the plaintiff may have $10,000 in attorney's

> fees against Mr. Parker only.
> (Transcript at 475:27 to 476:2)

This is the exact amount awarded in Judge Rushing's vacated order of August 28, 2007 (where she did not address the underlying merits either). James Parker and Michael Halliwell both signed a Notice of Appeal from the August 28th award of $10,000 to Charles Jensen, but Plaintiff's attorney argued later that Defendants' appeal from the initial award of $10,000 had no force or effect. (May 5, 2008 Supreme Court Appendix B at 20:17-25)

Appellants cite a key case re Judge Rushing's violation of CRC 8.750(a):

Judge Rushing's award of $10,000 in attorney's fees as a default judgment in her Order of August 28, 2007 is repeated without any modification or any explanation in her Order of September 25, 2007. Therefore Defendants' August 29, 2007 notice of appeal fully covers the September 25, 2007 Order. Thus *Grant v List & Lathrop* (1992) 2 Cal.App.4th 993, 997 says (in implementing the mandate of California Rules of Court Rule 8.750: "A Notice of appeal shall be liberally construed in favor of its sufficiency"):

> First, there is the general rule that notices of appeal should be construed in favor of sufficiency and liberality with which the appellate courts accept as timely an appeal filed too soon, i.e.,

> before entry of judgment or order challenged. [Citations.] (May 5, 2008 Supreme Court Appendix B at 25:24 to 26:7)

97. The opinion states (4:6): "Therefore [because the liberal construction of Notices of Appeal mandated by CRC 8.750(a) allegedly does not apply], Respondent argues the issue is not properly before the Appellate Panel."

Charles Jensen never did, and never could, give an example of a case where the intent to appeal is so clearcut as in *Paxinos v Halliwell & Parker*, where the self represented litigants are "tied in knots" by evasive maneuvers around this issue such as those by the Judge and attorney in this case. The calendar speaks for itself: Defendants had one month to file their Notice of Appeal challenging the trial related grievances argued seven months after the trial ended and decided by the Appellate Branch six weeks after that. And it got much worse, it was a year to the day (September 25, 2007 to September 25, 2008) between the fees award that the Appellate Branch purported to approve (without proper transcript access or briefing) in the Order of March 6, 2008, and the Appellate Branch hearing.

98-100. The opinion states (4:7-9): "As noted earlier, it's unclear from the several notices of appeal who was appealing what. Assuming arguendo that Parker has actually appealed the attorney fee award against him ($10,000), there is no basis for reversing the award."

Attachment #5 is Judge Rushing's Order of September 25, 2007 (placed in the file, but no signed or endorsed-filed copy was ever served on the parties) which awarded $10,000 in attorney's fees to Plaintiff's attorney Charles Jensen on the totally false basis that "Defendant Parker did not oppose the motion." Judge Rushing's announced intention to rule in Plaintiff's favor was appealed by Defendants' September 26, 2007 Notice of Appeal (Attachment #6). Appellants' April 18, 2008 Petition (**at 8:19 to 9:6**) discusses how Charles Jensen refused to accept the $375 specified by Local Rule 2.2E for the prevailing party in a normal court trial (he demanded an UNREVIEWABLE $4,000 even though, when faced with Judge Nadler's refusal to allow a jury trial because the address of the property was put in the wrong place on Defendants' form UD-150, Defendants were willing to voluntarily leave the property). For fighting against this $4,000 unreviewable fees award for giving up, Defendants were eventually saddled with $10,000 in fees by Judge Rushing, even though *Santisas v Goodin* (1998) 17 Cal 4th 599, 614 states: "We are satisfied that concern for the efficient and equitable administration of justice requires that the parties be left to bear their own attorney's fees." *International Industries v Olen* (1978) 21 Cal 3d 218, 224-225 explains: "The purpose of litigation is to resolve participant's disputes, not compensate participating attorneys. Our courts are sufficiently burdened without combat kept alive solely for attorney fees." (Defendants'

Petition to Review (S163276) re March 6, 2008 Decision at 26)

101-104. The opinion states (4:9-11): "Parker never opposed the motion for attorney fees. Defendant Halliwell, who was not Parker's attorney, [but functioned in that capacity, as he was required to do in order to defend against being evicted himself, in nearly every aspect of the case for which Respondent Charles Jensen is seeking a fees award] and against whom no fees were sought, [but who would have to pay half of whatever was assessed against James Parker, because of their binding cost-sharing agreement] did not have standing to oppose the motion (against Parker) for attorney fees."

After parroting Judge Rushing's false statement in her August 28, 2007 Tentative Ruling ("Defendant JAMES PARKER did not oppose the motion.") in his Proposed Judgment After Motion (CI 1462), Charles Jensen shifts ground in his October 27, 2008 Reply Brief (LNT 7:23-24), saying: "James Parker did not file an official opposition to the Motion for Attorney's Fees." This quibble about the wording on the face-sheet caption of James Parker's August 22, 2007 opposition (CI 1066-1117) might have been relevant only if mislabeling had caused Judge Rushing to overlook James Parker's filing. However, James Parker reminded Judge Rushing of his August 22, 2007 opposition on August 28, 2007 (CI 1240). By clinging tenaciously to an alleged "labeling defect" in James Parker's opposition as grounds for granting Charles Jensen's fees motion, Judge Rushing flouted the mandate of *City of Shasta Lake v County of*

Shasta (1999) 75 Cal. App.4th 1, 11: "The law aspires to respect substance over nomenclature."

Appellants' January 2, 2009 Court of Appeal Mandamus Petition notes:

> In fact, Michael Halliwell did NOT acquire standing by volunteering to pay half of James Parker's legal bills. Dr. Halliwell paid his $180 and became a Defendant in this case, because the only alternative was to be evicted automatically. It is his major role in the eviction proceedings (which was the foundation for all the attorneys' fees being sought in this case) which gives him the "close relation" to his co-defendant that satisfies one of the three prongs of the *Powers v Ohio* (1991) 499 U.S. 400, 410-411 *jus tertii* standing test. It is putting it mildly to say that James Parker faces "some hindrance" in defending the conduct of legal proceedings managed by his co-Defendant. This satisfies another prong of the *Powers* standing test. It is undisputed that the cost sharing agreement between Co-Defendants PRECEDES any fees award, and it is just as binding as any obligation to pay attorney's fees James Parker may be thought to have under the rental agreement. Michael Halliwell has already suffered a $5,059 "injury in fact" on account of the trial court's first fees award, and he faces a tripling of this burden if Judge Rushing's $20,720 fees award is ultimately upheld. Judge Rushing got it totally wrong when she shut a party, who meets all three of the *Powers* standing

> criteria, out of participation in the fees aspect of the case because "He doesn't have the right to this motion. He's a stranger." (Transcript at 475:18-19) (Id. at 14:22 to 15:6)

Defendants' November 13, 2007 Analysis of Proceedings before Judge Nadler gives examples of Judge Nadler's allowing Defendants to manage their case without interference:

> Judge Nadler asks James Parker if he would like to add anything. He responds: "No, not at this time – I'm trying to follow along with the arguments." (Transcript at 10:28 to 11:1) (CR-1138)
>
> Judge Nadler asks James Parker to finish his comments on the timeline, who says: "I have to defer to Mr. Halliwell to try to address that issue." (Transcript at 13:25-26) (CR-1141)
>
> Judge Nadler [said to] Defendant Halliwell "You are here representing yourself. I know you are providing advice to Mr. Parker, and that's fine, but I will tell you that regardless of the fact that you are not represented by a lawyer, you will be held to the same standards as a lawyer." (Transcript at 90:24 to 91:1) (CR-1171):
>
> Attachment #2 is Judge Rushing's August 28, 2007 Tentative Ruling (issued in violation of Local Rule 2.2D) awarding $10,000 in attorney's fees because: "Defendant Parker did not oppose the motion. Defendant Halliwell filed

some papers, but fees are not sought against him. Since he is not an attorney, he cannot represent or file opposition on behalf of Defendant Parker. Therefore , they are not being considered." Appellants' April 18, 2008 Petition for Mandamus to Clarify the March 6, 2008 Opinion (**at 11:19 to 12:11**) points out how half of the costs of defending against eviction, including attorney's fees, was borne by Defendant Halliwell under a cost sharing arrangement (whose validity was unquestioned). Appellants' April 18 Petition (**at 10:5-13**) also points out that Judge Rushing had previously accepted and granted a motion by Defendant Halliwell, for a continuance of the attorney's fees hearing, in spite of Plaintiff's challenge to Halliwell's standing to make such a motion. (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 22)

Attachment #3 is Charles Jensen's Proposed Judgment After Motion, which attempts to implement Judge Rushing's Tentative Ruling, by presenting this proposal directly to Judge Rushing's judicial assistant on August 30, 2007, and mailing it to Defendants, so that they would be unable to react until court opened after the Labor Day Holiday on September 4, 2007 (see Appellants' April 18 Petition **at 10:14 to 11:19**). Charles Jensen knew that the basis for this Tentative Ruling was false (and indeed, in a motion to be heard by Judge Rushing on May 6, 2008, he is asking for $493 for reading James Parker's August 22, 2007 Opposition to the $10,000

fees award, which he claimed in his Judgment After Motion did not exist). (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 23)

Attachment #4 is Judge Rushing's Order of September 5, 2007, which was a temporary retreat in the face of the explicit terms of Local Rule 2.2D (quoted in full in Attachment #11) that "All law and motion matters in unlawful detainer actions shall be scheduled on the Unlawful Detainer Law & Motion Calendar" AND "No tentative rulings will be made available for matters on this calendar." Appellants' April 18, 2008 Petition (at 14:8-17) discusses how Judge Rushing tried to PREVENT James Parker from curing the "defects" of memoranda opposing an award of attorney's fees which were submitted by Defendant Halliwell, by resubmitting the same arguments in his own name. Her Order of September 5 states: "No further papers of any kind will be permitted to be filed on this motion prior to the next hearing date of September 25, 2007." As Appendix B Transcript Analysis notes (at 6:15-16) when James Parker came to the September 25, 2007 hearing and said "I have some papers to put in, if I may?" Judge Rushing replied "No, it's too late for that, sir." (Transcript at 330:26-28) (Defendants' Petition to Review (S163276) re March 6, 2008 Decision at 24)

105. The opinion repeats its opening statement (4:13): "Appellants fail to demonstrate any error,"

The Table of Contents in Footnote #27 provides 30 adverse and indefensible rulings by the trial court; the Appellate Branch hasn't "laid a glove" on any one of them. Nor have they provided any authorities contrary to the 120 referred to (CR-1574 to CR-1578) in Footnote #27.

106. The opinion again repeats its main thesis (4:13): [There was no error,] "let alone any reversible error."

Regrettably, the authors of the Appellate Branch Opinion of March 6, 2008 have they provided little to disprove the prediction the authors The June Primary 1998 Voter's Pamphlet argument against Proposition 220:

> Under this proposal superior court judges will be assigned to sit on an appellate court to review appeals from the decisions of other superior court judges in cases that used to go to the municipal court. A judge cannot fairly review the work of a colleague, knowing that perhaps next week their roles will be reversed. The appearance and substance of justice will be questioned and public confidence in the courts will be eroded.

107. The opinion concludes (4:13-14): "The decision of the trial court is affirmed."

Except for two opening sentences invoking the fact that the Appellate Branch had indeed ruled in Respondent's favor, here (in his March 26, 2008

Opposition to Defendants' Motion to Reconsider the Order of March 6, 2008) is the entirety of the ONLY response to ANY of Defendants' motions for reconsideration or rehearing (or petitions to higher courts) that Charles Jensen has ever made:

> *The purported 'Request for Reconsideration; herein is cobbled together with excerpts from the internet (irrelevant), misquoted legalisms (irreverent), and the Defendants' own conclusion as to it's impact (meaningless). Between the trial of June 2007, and the appellate arguments of January 2008, these Defendants filed and served, more than 2900 pages of whimsy, dribble and nonsense. Nowhere were there, or are there, cohesive legal thinking and conclusions based on law and the facts of this case. This, as all other "pleadings," are without merit, and it is respectfully requested that this "motion" be denied.*

No Judge has ever asked Charles Jensen to back up his scornful claim.

At the May 6, 2008 hearing James Parker protested to Judge Rushing: "But the point here is he's never – he's never controverted with law any of the citations that we have – that we've briefed him on. All he said is they're dribble [Jensen's exact word], nonsense and whimsy; so I would like to ask the Court to ask him what percentage of those citations that were issued – what fraction are whimsy, dribble and non-sense?" Judge Rushing replied: "Okay, Mr. Parker, I'm not

going to ask that question." James Parker continued: "One last thing, then. Okay. I would like to ask one more question. Can he now cite any one citation that's whimsy, dribble and nonsense?" Judge Rushing replied: "I'm not going to force him to do that." James Parker then complained: "Defendants take exception to that because all he's – essentially all his argument is it's all garbage. He's never controverted a single one of our citations, and they are scholarly, and they're well documented." (Transcript at 17:9-24) (Supreme Court Appendix E at 12)

No. 09-171

IN THE
Supreme Court of the United States

MICHAEL HALLIWELL & JAMES PARKER,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA,

Respondent,

CHRYSANTHE PAXINOS,

Real Party in Interest

On Petition for a Writ of Certiorari
To the California Supreme Court

PETITION FOR REHEARING

Michael J. Halliwell & James F. Parker
Defendants in Propria Persona
271 E. Cotati Ave, Cotati CA 94931
707-795-5526, halliwel@csulb.edu

November 4, 2009

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09-171 CERTIORARI REHEARING PETITION

Recent developments have further aggravated our deprivation of property and even liberty without any semblance of Due Process of Law. We have provided ALL of the court orders imposing one fees award on top of another, and there is not the barest reference to any facts of the case or any legal basis in any of them, for fees awards which now add up to more the $60,000. One could scan the transcripts for the hearings where the fees awards were made, and the appeals therefrom, and not find ONE WORD from Plaintiff's counsel (Charles Jensen) in support of these fees awards, and he has been equally silent in this Court's proceedings. As Defendants have noted previously, WE DO NOT SEEK PLENARY CONSIDERATION ON THE RECORD AS IT STANDS, BUT ONLY A FACT-FINDING REMAND TO FEDERAL DICTRICT COURT.

Rose v Mitchell (1979) 443 U.S. 545, 557 affirms:

> Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand.

Rose v Mitchell (1979) 443 U.S. 545, 561 affirms:

> But claims that the state judiciary itself has purposely violated the Equal Protection Clause are different. There is a need in such cases to ensure that an independent means of obtaining review by a federal court is available on a broader basis than review only by this Court will permit. A federal forum must be available if a full and fair hearing of such claims is to be had.

The circumvention of Defendants' March 10, 2009 appeal of a $19,000 attorney fees award cited in our October 13, 2009 Supplemental Brief is being further compounded by a "transcript slow walk," which has blocked Defendants' efforts to appeal an additional $9,000 attorney fees award (made without any discussion of the merits being allowed) by Judge Mark Tansil on September 1, 2009.

Gardner v California (1969) 393, U.S. 367, 369

explains why transcript access is an essential aspect

of Due Process for a self-represented defendant:

> It is argued that since petitioner attended the hearing in the Superior Court, he can draw on his memory in preparing his application to the appellate court. And that court, if troubled, can always obtain the transcript from the lower court. But we deal with an adversary system where the initiative rests with the moving party. Without a transcript the petitioner, as he prepared his application to the appellate court, would have only his own lay memory of what transpired before the Superior Court. For an effective presentation of his case he would need the findings of the Superior Court and the evidence that had been weighed and rejected in order to present his case in the most favorable light.

Gardner v California (1969) 393, U.S. 367, 370,

addresses an issue, linked to the "transcript slow

walk" still obstructing our appeals:

> Since our system is an adversary one, a petitioner carries the burden of convincing the appellate court that the hearing before the lower court was either inadequate or that the legal conclusions from the facts deduced were erroneous. A transcript is therefore the obvious starting point for

> those who try to make out a case for a second hearing.

In *Gardner v California* (1969) 393, U.S. 367, 370, the U.S. Supreme Court invalidates lower court proceedings because: "There is no suggestion that in the present case there is any adequate substitute for a full stenographic transcript."

1. Fraudulent fees awards lack finality

Most of the attorney fees in dispute are for simply reading (without furnishing any work product relating to these readings) Defendants' protests about the fraudulent tactics employed by Plaintiff's counsel.

Kenner v Commissioner of Internal Revenue (1968) 387 F.2d 689, 690-691 held:

> Finality accrues promptly after the exhaustion of the possibilities of direct review. In the instant case, the decisions became final in 1963 upon the expiration of the time allowed for filing a petition for certiorari to review our decision affirming the decision of the tax court. . . . . It has also been decided that where such finality is reached by lapse of the prescribed period after decision by

the Supreme Court it precludes further consideration by the Supreme Court on application for rehearing. (*Helvering v Northern Coal Company* (1934) 293 U.S. 191, 193; *Simpson & Company v Commissioner of Internal Revenue* (1944) 321 U.S. 225, 230)

Kenner (387 F.2d at 691) also notes:

We think, however, that it can be reasoned that a decision produced by fraud on the court is not in essence a decision at all, and never becomes final. It is most difficult to assume that Congress intended that a decision procured by fraud on the tax court could not be reached by any procedure in any tribunal, once the possibilities of direct review were exhausted. If a convincing case of palpable fraud on the court were presented, it is hard to justify a holding that it could not be considered. . . . .

There is a heavy burden both of particularized pleading and of proof upon the one who seeks to impeach an order or decree of a court. (Chicago Title & Trust Co. v. Fox Theatres Corporation (1960) 182 F. Supp. 18, 31) "There must be an offer to prove specific facts which will pretty plainly impugn the official record". [Citation] . . . .

"Fraud upon the court" should, we believe, embrace only "that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that

are presented for adjudication". (7 Moore's Federal Practice, 2d ed., p. 512, P60.23)

Toscano v Commissioner of Internal Revenue (1971) 441 F.2d 930, 933 observes: "So far as we know Kenner v Commissioner of Internal Revenue (1968) 387 F.2d 689, has not yet been criticized by any court." *Toscano* cites the *Kenner* holding that a decision obtained by fraud "can be set aside at any time because it is not a decision at all" and notes that this view is "strongly supported, as applied to the Court of Appeals, by the Supreme Court in Hazel-Atlas Glass Company v. Hartford Empire Company (1944) 322 U.S. 238, 248."

Universal Oil Products Co. v Root Refining Co. (1946) 328 U.S. 575, 580 affirms:

No doubt, if the court finds after a proper hearing that fraud has been practiced upon it, or that the very temple of justice has been defiled, the entire

cost of the proceedings could justly be assessed against the guilty parties.

Chambers v NASCO, Inc. (1991) 501 U.S. 32, 44, cites the holding of *Hazel-Atlas Glass Co. v Hartford Empire Co.* (1944) 322 U.S. 238, 245, that a final judgment may be set aside "upon proofs that a fraud has been perpetrated on the court." *Chambers v NASCO, supra*, affirms the duty to safeguard the public from fraudulently begotten judgments and cites *Universal Oil Products Co. v Root Refining Co.* (1946) 328 U.S. 575, 580, affirming that "a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud."

2. Court's role in "liberty and justice for all"

The Court's October 13, 2009 and October 20, 2009 rulings in this case appear to be following Justice Roberts' **dissent** in *Precision Instrument*

Manufacturing Company v Automotive Maintenance

Machinery Company (1945) 324 U.S. 806, 820:

> The case ought not to have been taken by this Court. It involves merely the application of acknowledged principles of law to the facts disclosed by the record. Decision here settles nothing save the merits or demerits of the conduct of the respective parties.

Equal Justice Under Law is better served in the

Court's opinion in *Precision Instrument, supra*:

> The guiding doctrine in this case is the equitable maxim that "he who comes into equity must come with clean hands." This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of a court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. (324 U.S. at 814)

Our October 5, 2009 Motion to Judge Boyd re

Plaintiffs setting a premature OEX Hearing notes:

> In their September 26, 2009 Inquiries to Charles Jensen, Defendants set forth specifics of the march by Plaintiffs counsel, from violating the

> conduct rules for his profession, in Business & Professions Code § 6068(d), to outright criminal activity. . . . .
>
> The bogus back-dated documents discovered by Defendants on June 25, 2007, which had been inserted in the Case File as if they had been there since June 6, 2007, had the purpose of blocking any input by Defendants into the trial date setting process, contrary to the five day period for such input set forth on the Judicial Council's (www.courtinfo.ca.gov/selfhelp) website. . . . . Charles Jensen committed perjury with respect to his mishandling of Form UD-150, to avoid having to supply the information Defendants sought via Form UD-106 Interrogatories 71.7 & 77.1.

The fact that this file tampering and perjury eliminated Defendants' opportunity for discovery (and allowed an anonymous compilation of hearsay complaints to become the key factor in the jury's verdict), makes this passage from *Precision Instrument* (324 U.S. at 817) a close parallel: "The important fact is that Automotive had every reason to believe and did believe that Larson's application was fraudulent and his statements perjured." Since

tenants are a large part of the public, the subversion of their rights in Sonoma County Superior Court, makes this *Precision Instrument* (324 U.S. at 818) holding fully applicable to the remand to Federal District Court, which appellants here seek:

> Public interest demands that all facts relevant to such matters be submitted formally [to Federal District Court], which can then pass upon the sufficiency of the evidence. Only in this way can that agency act to safeguard the public in the first instance against fraudulent [denials of Due Process]. Only in that way can the [federal judiciary] and the public escape from being classed among the "mute and helpless victims of deception and fraud." (Hazel-Atlas Glass Co. v Hartford Empire Co. (1944) 322 U.S. 238, 246).

3. Right to federal Due Process protection

England v Louisiana State Board of Medical Examiners (1964) 375 U.S. 411, 415 affirms:

> There are fundamental objections to any conclusion that a litigant who has properly invoked the jurisdiction of a Federal District Court to consider federal constitutional claims can be compelled, without his consent and through no fault of his own, to accept instead a state court's determination of those claims.

England, supra, notes that review of state court rulings on federal matters only by a writ of certiorari may be inadequate, without an initial determination by a federal trial court. The opinion explains:

> This is true as to issues of law; it is especially true as to issues of fact. Limiting the litigant to review here would deny him the benefit of a federal trial court's role in constructing a record and making fact findings. How the facts are found will often dictate the decision of federal claims.

As an example, *England* cites litigation involving the Virginia Supreme Court, during that state's era of "massive resistance" to civil rights. In *Harrison v N.A.A.C.P.* (1959) 360 U.S. 167, 177, the U.S. Supreme Court sought to "spare the federal court of unnecessary adjudication" and sent the case back to Virginia courts for rulings which might "materially change the nature of the problem." *Harrison, supra,* adds: "The possibility of limiting interpretation,

characteristic of constitutional adjudication, also cannot be ignored."

N.A.A.C.P. v Button (1963) 371 U.S. 415, 428-429 upheld Appellant's challenge that Virginia's courts could not "construe and apply Chapter 33 to abridge the Freedoms of the First Amendment, protected against state action by the Fourteenth" so as to "infringe the right of the NAACP and its members and lawyers to associate for the purpose of assisting persons who seek legal redress for infringements of their constitutionally guaranteed rights."

Appellants seek to rectify "massive resistance" to tenants rights by the Sonoma County Superior Court (a matter where fact-finding by a Federal District Court is of vital importance).

N.A.A.C.P. v Button (1963) 371 U.S. 415, 429-430 observes: "In the context of NAACP objectives, litigation is not a technique of resolving private

differences; it is a means for achieving the lawful objectives of equality of treatment. . . . It is thus a form of political expression. . . . And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances."

4. Hollowing out of Due Process protections

Pernell v Southall Realty (1974) 416 U.S. 363, 385, affirms that a tenant's right to a (properly conducted) jury trial in eviction proceedings must not be brushed aside as a nuisance:

> A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had a fair opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.

On the crucial attorney fees issue (wherein the $375 standard fee for a normal court trial under

Local Rule 2.2E has escalated 160 fold), Defendants have been denied the barest semblance of a fair adjudication of the factual or legal basis for Charles Jensen's fees awards. Defendants are therefore within their rights to seek federal fact-finding. However, a strong minority of the Supreme Court has expressed the view that the High Court is scaling back its protection in this area.

In *Butler v McKellar* (1990) 494 U.S. 407, 424-425, a four-justice minority expresses the view that once-robust protection of federal constitutional rights is shriveling into insignificance:

> State courts essentially are told today that, save for outright "illogical" defiance of a binding precedent precisely on point, their interpretations of federal constitutional guarantees - no matter how cramped and unfaithful to the principles underlying existing precedent - will no longer be subject to oversight through the federal habeas system. . . . .
>
> This Court has never endorsed such a cramped view of the deterrent purpose of habeas review:

> we have always expected the threat of habeas to encourage state courts to adjudicate federal claims "correctly," not just "reasonably." . . . .
>
> And, as explained above, "correct" adjudication has always been thought to require courts to exhibit "conceptual faithfulness" to the principles underlying our precedents and thereby to anticipate reasonably foreseeable applications of those principles.

The dissenting justices in *Butler v McKellar* (1990) 494 U.S. 407, 427, 429, continue to refuse to "go gentle into that good night" and to "rage, rage against the dying of the light" (Dylan Thomas):

> Most significantly, the limited scope of the deterrence promised by the Court's holding today defeats Congress' purpose in establishing the scheme of federal habeas review of state criminal proceedings. Congress established such review because it perceived a potential "inadequacy of state procedures to raise and preserve federal claims [and was] concern[ed] that state judges may be unsympathetic to federally created rights." Kaufman v. United States (1969) 394 U.S. 217, 225-226. . . . .
>
> Moreover, Congress' insistence that "federal courts have the 'last say' with respect to questions of federal law" raised during state criminal proceedings, Kaufman, supra, at 225,

> cannot be satisfied by this Court's jurisdiction to review state proceedings directly. State courts are well aware that the "Supreme Court's burden and responsibility are too great to permit it to review and correct every misstep made by the lower courts in the application of accepted principles. Hence the Court generally will not grant certiorari just because the decision below may be erroneous." R. Stern, E. Gressman, & S. Shapiro, Supreme Court Practice 4.17, p. 221 (6th ed. 1986).

As matters stand in our case, no state or federal court has lived up to the following mandate. Our last Update reminded the First District Court of Appeal that rights given unequivocal support in decisional law, still need enforcement to be a living reality.

> The rule itself is settled with scarcely any conflict. It is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of stare decisis, and binding upon all courts. We are here asked to sanction its violation, either on the ground that a valid exception to the rule is applicable, or that despite the uniformity with which the rule has been applied, it may be disregarded by lower tribunals without fear of

> prevention by the higher courts. This last point cannot be too strongly emphasized, for the rule will disappear unless this court is prepared to enforce it. (*Abelleira v District Court of Appeal* (1941) 17 Cal 2d 280, 293) (Id. at 5)

CONCLUSION

Almost all of the fees awarded at issue here were for reading (but never responding to) Defendants' filings necessary for compliance with this Court's Rule 14.1(g)(i), relating to our attempts to secure state court rulings on our Due Process and Equal Protection grievances.

This aspect of Rule 15.2 is vital: "Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition." When the opposing party has filed its brief in opposition, this Court will be in a better position to determine the proper scope of Rule 10 limitations.

Certificate re Grounds for Rehearing

Self represented Appellants Michael Halliwell and James Parker hereby affirm that this Petition for Rehearing is submitted not for delay, and as the most feasible way of extricating themselves from the wave after wave of attorney fees awards, which has dragged out this aspect of *Paxinos v Halliwell & Parker* for more than two years after Defendants left the property.

We affirm that our Petition is a good faith effort to inform the Court of controlling developments since our previous submissions, to provide related new case law citations, and give a small amount of background to tie in with our October 13, 2009 Supplemental Brief.

_____

Michael Halliwell

_____

James Parker